

1
2 SUPERIOR COURT OF THE STATE OF CALIFORNIA
3 FOR THE COUNTY OF SAN DIEGO
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5 - - - - -)
6 Coordination Proceeding) JCCP No. 4042
Special Title (Rule 1550 (b)))
7) DEPOSITION OF
In re TOBACCO CASES II)
8) MICHAEL W. OGDEN,
This document relates to:)
9) PH.D.
The People of the State of)
10 California, et al. v. Philip) VOLUME I
Morris, Incorporated, et al.,)
11 Los Angeles Superior Court) PAGES 1 - 205
Case No. BC 194217;)
12)
The People of the State of)
13 California, et al. v General)
Cigar Co., et al., San Francisco)
14 Superior Court Case No. 996780;)
15)
The People of the State of)
California, et al. v. Brown &)
16 Williamson, et al., San Francisco)
Superior Court Case No. 996781;)
17)
The People of the State of)
18 California, et al. v. Tobacco)
Exporters, et al., San Francisco)
19 Superior Court Case No. 301631)
- - - - -)

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22 TAKEN ON: Wednesday, July 12, 2000
23 TAKEN AT: 550 West C Street, Suite 1440
San Diego, California 92101

24 REPORTED BY: Margaret A. Smith
25 CSR No. 9733
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3 Michael W. Ogden, Ph.D. (Mr. Hulburt) 4
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1 San Diego, California; Wednesday, July 12, 2000; 9:14 a.m.
2
3 MICHAEL W. OGDEN, Ph.D.,
4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:
5
6 EXAMINATION
7 BY MR. HULBURT:
8 Q Sir, would you please state your full name
9 and spell it for the record.
10 A Michael Wayne Ogden, M-i-c-h-a-e-l,
11 W-a-y-n-e, O-g-d-e-n.
12 Q You've given depositions before?
13 A I've given depositions before. Sure.
14 Q Approximately how many times?
15 A Three or four sounds about right.
16 Q When was the most recent?
17 A I really can't say. It's not been within the

18 last few months. So I would, say, maybe within the last
19 year.

20 Q All right. The three or four prior
21 depositions, during what period of time is that?

22 A Over the last three or four years.

23 Q Have you ever testified in court?

24 A Yes.

25 Q How many times?

26 A Three times.

27 Q And, again, give me some sense of the timing
28 of those.

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1 A Well, again, over the last three or four
2 years.

3 Q I understand that you are currently employed
4 by R.J. Reynolds Tobacco Company; is that correct?

5 A That is correct.

6 Q What is your position with R.J. Reynolds?

7 A My job title is principal scientist.

8 Q Are you within a particular department of
9 R.J. Reynolds?

10 A I am.

11 Q What is the department?

12 A Research and development.

13 Q How long have you been a principal scientist
14 at R.J. Reynolds?

15 A Two to two and a half years.

16 Q How long have you worked for R.J. Reynolds?

17 A It would be 15 years in October.

18 MR. KODSI: And, Chris, let me just make
19 sure. As you began asking the questions, that Dr. Ogden
20 has been designated both as an expert in this case and as
21 one of the company witnesses most knowledgeable on various
22 issues. The part of the deposition that's taking place
23 now is the expert deposition, just so we're all under the
24 same understanding.

25 MR. HULBURT: Okay. Well, that was not my
26 understanding, that there was some distinction to be made
27 in the questioning.

28 MR. MILES: Counsel, I talked with Karen
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1 Frostrom of your office on Friday, and we specifically
2 discussed procedures. It was her suggestion and mine, we
3 both were in agreement. But I think it came at her
4 suggestion, okay, that the deposition start with Dr. Ogden
5 as the expert as opposed to PMK and that there be a
6 distinction in the depositions between those two roles.

7 You're welcome to call her, but I'm sure she
8 will verify that.

9 MR. HULBURT: Well, I'm not sure I even
10 understand what that means so that --

11 MR. MILES: Well, as a PMK --

12 MR. HULBURT: To me, I don't see the bright
13 line. I mean, I hear what you're saying, but I can
14 certainly imagine a lot of questions where there's no
15 bright line distinction. So I'm not quite sure how that
16 really works in real life.

17 MR. MILES: Well, there are areas that he
18 knows about and can discuss, okay, where he would not hold
19 himself out as an expert. And -- but at the same time,
20 he's knowledgeable and he would be described as a PMK or
21 as a company witness but he's not holding himself as an
22 expert in those areas.

23 I don't know why I had a conversation with
24 Karen and we reached certain agreements if she's not going
25 to communicate them to you.

26 MR. HULBURT: Are you telling me that an
27 agreement was reached --

28 MR. MILES: Yeah.

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1 MR. HULBURT: -- on this issue?

2 MR. MILES: Yeah.

3 MR. HULBURT: Or that R.J. Reynolds took a
4 position which it conveyed to Karen?

5 MR. MILES: No. I believe it was her
6 suggestion. I know she raised the issue of logistically
7 how we were going to handle this issue.

8 MR. HULBURT: Should I understand --

9 MR. MILES: I would invite you to call her to
10 find out what happened on Friday.

11 MR. HULBURT: Should I understand that
12 Mr. Ogden, then, is not being made available today as a
13 person most knowledgeable?

14 MR. MILES: The procedure we agreed on -- if
15 you want to repudiate the prior agreement, okay, then we
16 can go off the record and figure out how to proceed
17 here. But it will entail the confusion that he will have
18 to describe for you where he's answering a question as an
19 expert and where he's not answering it as an expert
20 because he's not holding himself out in that capacity.
21 That's the difficulty, and that's what Karen and I talked
22 about on Friday, is that from your perspective -- I think
23 this is really more for your benefit than for the
24 witness's or for ours.

25 If you ask him some questions, he would have
26 to say to you I can't answer that as an expert. I'm not
27 holding myself out as an expert in that area, but as a
28 PMK, I can respond to the question. That makes it very

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1 unmanageable for you. That was my clear perception of
2 Karen's concern when I talked to her on Friday.

3 And we had an agreement at the end of our
4 conversation that Dr. Ogden would appear first as an
5 expert and then a second and separate deposition would be
6 taken of him as the PMK.

7 MR. HULBURT: When is that?

8 MR. MILES: As soon as this one is done.

9 MR. HULBURT: Is any of that because of R.J.
10 Reynolds' inability or failure to produce documents
11 related to his PMK designation?

12 MR. MILES: There is no failure to produce
13 documents. I object to that characterization. The reason
14 for the agreement is because Karen and I talked about it
15 on Friday. And I do believe, if I recall correctly, it
16 was her proposal and her request that he appear first as
17 an expert. And I invite you, instead of asking me
18 suggestive questions that suggest that there's something
19 being done by Reynolds here, to call your colleague, who
20 you had talk to me on Friday, to find out why she agreed
21 to this and whether we did, to see what the rationale
22 was. If you'd like to go off the record and call her,
23 that's fine.

24 MR. HULBURT: Well, right now, I'm not even
25 interested in the rationale. The question that I asked
26 earlier was the real question.

27 Should I understand right now that Mr. Ogden

28 is not being made available as a PMK?
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1 MR. MILES: The agreement that I reached with
2 Karen on Friday was that he would have his deposition
3 taken first in his capacity as an expert and only as an
4 expert, that as soon as that deposition was completed,
5 that we would go back on the record and his deposition
6 would be taken as a person being designated as the PMK so
7 that he would not have to qualify answers that were
8 appropriate questions to a PMK, by saying I'm only
9 answering the question in this capacity, I'm not answering
10 in that capacity, okay, which creates some awkwardness in
11 the record and is something that Karen was clearly
12 concerned about when she talked to me on Friday.

13 But he's here to give testimony as an expert,
14 on one hand, and separately as a PMK designee. If it's
15 your desire to do them all at the one time, then you need
16 to talk to Karen about what to do with the agreement that
17 she reached with me on Friday.

18 MR. HULBURT: I'm just -- I'm struggling with
19 the notion that I will be able to draw a distinction in
20 the questions that I ask or in the answers that he gives.
21 I think in the abstract, I guess I understand the
22 discussion. In real life, it's quite difficult for me to
23 figure out when I will be asking an expert question and
24 when I will be asking a PMK question. Some might be
25 obvious, but some are clearly not obvious.

26 MR. MILES: Go call your colleague and
27 express your concerns to her about what she proposed to me
28 and what we agreed to on Friday.

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1 MR. HULBURT: I don't think that will help us
2 today. I'm the one who is going to ask the questions.
3 I'm trying to understand what it really means in real life.

4 MR. MILES: Counsel, I need to know who I'm
5 dealing with. If Karen is a separate operator and an
6 agreement that I reached with her has no bearing on what
7 you've agreed to and what your firm has agreed to, then I
8 need to know that. I've already had the problem on at
9 least one occasion --

10 MR. HULBURT: You don't need to challenge the
11 agreement.

12 MR. MILES: But you're challenging the
13 agreement.

14 MR. HULBURT: No, I'm not. I'm going to
15 attempt to put the agreement in effect.

16 MR. MILES: All right.

17 MR. HULBURT: I'm being quite candid with you
18 to suggest that the agreement is not as clear cut, at
19 least as I understand it. It's quite difficult for me to
20 know exactly which question falls in which category. I'm
21 just saying that, to me, is a real life dilemma. And you
22 need to deal with me on that because I'm the one who is
23 going to be asking the questions. So I'm thinking through
24 the agreement with you, and I'm acknowledging to you, that
25 to me, in real life, it's going to be more complicated
26 than it sounds in the abstract, describing the agreement.
27 I'll do the best I can do. I'll ask questions, and we'll
28 see what happens.

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1 But I don't know that I will know, in my own
2 mind, whether the question that I'm asking is an expert
3 witness question or a PMK question or whether it's both or

4 whether they overlap or whether the answer calls for part
5 from one category and part from the other category. I
6 don't know that any of us will know that distinction. You
7 know, it's kind of an abstract thing until we get to it, I
8 think.

9 I'm not trying to repudiate any agreement
10 that was discussed or made between the parties. I'm
11 just -- I mean, I think if we all were candid about it,
12 we'd have to acknowledge that that's not as quite a
13 clear-cut bright line as the agreement makes it sound.

14 So, I mean, I don't know what to do about
15 that. That's why I was trying to -- I was seeking a
16 bright line thing from you.

17 Is he made available now as a PMK? It sounds
18 like, yeah, he is.

19 Is he made available now as an expert? Yeah,
20 he is.

21 MR. MILES: I don't think I understand your
22 "is he made available now." He's here physically. The
23 difficulty with roles is that there are areas where he has
24 knowledge, as any person does, where they don't hold
25 themselves out as an expert. Okay. I have some knowledge
26 on chemistry. You do also. I don't hold myself out as an
27 expert chemist.

28 If you were to ask me what I know in that
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1 area, I could tell you, but if you were taking my
2 deposition as an expert, I would have to say I'm not
3 holding myself out as an expert in that area. That's the
4 problem. Okay. And that's the difficulty with the bright
5 line, because in his capacity as an expert, he has to draw
6 that line and say that's not an area where I hold myself
7 out as an expert.

8 And that's the reason to have the bright line
9 be at the beginning of the deposition as opposed to having
10 to be drawn all the way through with two different links,
11 because there are some areas where he would say, yes, I
12 have knowledge. I have information that's responsive, but
13 I don't hold myself out as an expert there. And the
14 difficulty is that if you take the deposition
15 simultaneously in both capacities, he has to give you, in
16 essence, two different answers at the same time.

17 And the concept was it would be easier to
18 have him appear as an expert first and then to have him
19 appear as a PMK. If you want to change the agreement,
20 then let's discuss that. We don't need to keep on the
21 record on this.

22 MR. HULBURT: Let me just interject. I know
23 you're not finished, and I'm not trying to interrupt you.

24 As an expert, he knows everything that he
25 knows as an employee of R.J. Reynolds, which -- all of
26 which presumably also is what allows him to be the PMK on
27 the issues that he's designated.

28 So the whole thing is overlapped because his
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1 knowledge as a PMK is the same knowledge that he has as an
2 expert.

3 So, in my mind, to me, the whole thing is
4 overlapped. And I cannot figure out how to ask questions
5 that would only ask him for an expert -- on the basis of
6 an expert opinion, that would have nothing to do with his
7 PMK status as a 15-year employee of R.J. Reynolds,
8 because, obviously, that's an artificial distinction.

9 MR. MILES: First of all, I just really don't
10 understand why you have somebody from your office call me,
11 propose a procedure, and then you walk in and say you know
12 nothing about the conversation, quarrel with the procedure
13 that was proposed, suggest that somehow it's my fault that
14 this procedure was agreed to, hint that I'm trying to do
15 something inappropriate, and then suggest that we don't --
16 that you don't want to follow the procedure.
17 I don't know what I did on Friday and why I
18 had that conversation, why I even took the phone call from
19 your office to have a conversation and agree to a
20 procedure and then have you come in and attack me for
21 having done that.
22 MR. HULBURT: I'm sorry that you feel
23 attacked.
24 MR. MILES: I don't understand why you're not
25 aware of the phone call, and I would invite you to explain
26 that because I'm dealing with your office under the
27 expectation that when I deal with Karen, that I'm dealing
28 with the firm and I'm dealing with all of you. When it's
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1 becoming apparent to me that when I deal with Karen, it's
2 got nothing to do with dealing with you or Mickey, that
3 you don't even talk to it, apparently.
4 I went into court yesterday and had
5 Mr. McGuire suggest that I never agreed to produce any
6 witness where I had a conversation with Ms. Frostrom where
7 we specifically agreed and conferred in writing, in fact,
8 that Dr. Ogden was going to appear today.
9 So I don't understand exactly why I had the
10 call on Friday or why I'm being attacked here for telling
11 you of an agreement that your office proposed and I agreed
12 to.
13 Now, if you want to do a different type
14 procedure, then let's go off the record and you tell us
15 what the procedure is you want to do, and we'll come back
16 on the record and say what it is. But I'd like to
17 consider what the procedure is going to be. But I would
18 invite you to call your office to find out why it is they
19 proposed something different rather than suggesting that
20 my agreeing to it somehow was inappropriate.
21 MR. HULBURT: Don, I don't know why you feel
22 you're being attacked. I don't know why you feel that
23 I've suggested you've acted inappropriately. I've tried
24 to tell you candidly that I'm trying to understand the
25 shades of gray in the agreement so that I can put it into
26 effect.
27 I've told you I'm not trying to repudiate any
28 agreement. I've asked you what I think are substantial
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1 objective legitimate questions about the agreement which
2 have to do with real life, how are we going to go forward.
3 You perceive that as an attack. I'm sorry
4 about that. It's not intended as an attack.
5 I'll tell you the purpose of the phone call
6 was because we believed that we were not receiving
7 documents for Mr. Ogden's deposition as a PMK. And would
8 we have documents before the deposition goes forward. And
9 if we don't have documents before the deposition, what do
10 we do.
11 I understand that it was R.J. Reynolds'
12 position that if we took the deposition as a PMK without
13 the documents and documents came later, that we would not

14 be allowed to do it again. That's of great concern to me
15 and something to which I will not agree.

16 So I understand that part of the conversation
17 was in that context and for that reason, from my office's
18 perspective.

19 I am aware that there was a discussion about
20 this idea that somehow we try to do it in pieces. I'm
21 trying to discuss with you objectively, candidly, not even
22 adversarially, what the hell does that mean, Don.

23 MR. MILES: Okay. If you're aware of the
24 conversation on Friday -- okay. Are you aware of the
25 conversation and the agreement on Friday, first of all?

26 MR. HULBURT: I'm aware of the conversation
27 and the issue.

28 MR. MILES: Okay. Were you aware --
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1 MR. HULBURT: I don't dispute --

2 MR. MILES: Were you aware of this agreement
3 before you came here today?

4 MR. HULBURT: I was aware that it was --
5 quite candidly, I was aware and I believed -- this might
6 have been in my own mind, I believed that it was R.J.
7 Reynolds' suggestion that we somehow try to separate these
8 things. I don't think it matters who suggested it, and
9 I'm not going to argue with you about whether we suggested
10 it or you've suggested it. I accept what you've said
11 about it. I accept everything that you've said about it.
12 I've not argued with you at all this morning, although you
13 feel attacked. I've not even tried to argue with you.

14 I'm simply trying to understand the reality
15 of this agreement, and I think I've raised at least a
16 couple legitimate questions which you've not engaged in
17 any thought process with me, like the idea that as an
18 expert he knows everything that he knows as the PMK and so
19 it's very hard for me to see the distinction in those
20 questions and hard for me to decide am I asking an expert
21 question or am I asking a PMK question because the
22 knowledge base will be exactly the same.

23 You gave me an example. He might say he's
24 not an expert on some issue. I accept that. Every expert
25 does that, and I expect him to draw the borders around his
26 expertise. I accept that. I don't think that's unique.
27 I don't think that has any special scenario.

28 So, I mean, I -- I'm not arguing with you at
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1 all. I'm only trying to understand in real life at the
2 moment what are we really talking about? What does it
3 really mean? I don't think that calling Karen will help
4 me. She could recite the agreement as accurately as you
5 did. That doesn't help me understand what it really
6 means. I need to understand what it means, here, now.
7 I'm asking you for that.

8 MR. LENDRUM: Should we go off the record?

9 MR. MILES: Yeah. I'm a little mystified
10 why, first of all, if you knew about the agreement, why
11 you acted as you did and acted to draw it to our attention
12 on the record, and, secondly, why you're insisting on
13 having this conversation during the course of the
14 deposition and putting it on the record.

15 MR. HULBURT: I don't care if it's on the
16 record or not. We can go off the record. The
17 conversation originated with Neil. He's been quiet ever
18 since then. It originated with Neil. It caught me off

19 guard because I was asking a basic set of introductory
20 questions which I think applied whether he's the PMK or
21 expert. You were trying to say it before I started.
22 That's fine. We didn't do anything wrong. So we got into
23 it. It's the first thing we talked about. I didn't
24 expect to talk about it right now, but we are. If you
25 want to go off the record, we can go off the record.

26 MR. MILES: All right. Let's go off the
27 record.

28 (Discussion off the record.)

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17

1 MR. KODSI: We're back on the record, and
2 we, off the record, reached an agreement that the
3 deposition will proceed, at least initially, as an expert
4 deposition of Dr. Ogden in his role as an expert in this
5 case.

6 At the end of the day, after we get the real
7 time transcript, we will go through with Mr. Hulburt, and
8 me and Don Miles, and if there are questions that
9 Dr. Ogden gives in his expert capacity that also fit
10 within his capacity as a person most knowledgeable, we
11 will stipulate to those so that we will save Mr. Hulburt
12 the time of having to re-ask those questions when he
13 deposes Mr. Ogden in his capacity as person most
14 knowledgeable.

15 That's at least my understanding of the
16 agreement, that the deposition from this moment, forward,
17 until it's ended and moved to deposition No. 2, will
18 proceed as an expert deposition.

19 MR. HULBURT: That's my understanding also.
20 BY MR. HULBURT:

21 Q Let's see. What did I get from? You've got
22 that you have been the principal scientist for two, two
23 and a half years. You've worked for R.J. Reynolds 15 --
24 or what will be 15 years in October.

25 And so I think I must have been asking what
26 does it mean to be a principal scientist at R.J. Reynolds.

27 A Okay. In your recharacterization, you said I
28 was the principal scientist. That's not quite true.

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18

1 There are more than one. I'm one principal scientist.

2 Q I understood that. Thank you.

3 A Okay. A principal scientist is one of a
4 number of rungs of a technical ladder that one can be
5 promoted to. It is a fairly high level within the R&D
6 organization. The principal scientist designates
7 someone -- that someone has a number of years of
8 experience and is recognized as an expert in certain areas
9 and has amassed technical credentials worthy of that level
10 of promotion within the organization.

11 Q What are the levels that would be above a
12 principal scientist?

13 A There is only one currently, and it is senior
14 principal scientist.

15 Q And what are the levels below principal
16 scientist?

17 A That's a difficult question to answer because
18 it gets a little bit confusing, but the level immediately
19 below principal scientist would be master scientist.

20 Then, as you progress backwards, there would
21 be a level called senior staff. That generally wouldn't
22 be scientist. That would be a particular specialty like
23 senior staff, chemist or senior staff, toxicologist or

24 something designating the particular area of expertise.
25 Working backwards, then, there would be
26 senior whatever, senior chemist. And working back from
27 that would just be R&D chemist or R&D toxicologist.
28 That, really, would be the professional
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1 ranks. There are many more below that that designate
2 nondegreed people, people with bachelor's degrees, ETS,
3 and there are many more below that.
4 Q When you started at R.J. Reynolds
5 approximately 15 years ago, what was your position?
6 A My entry-level position was R&D chemist.
7 Q And what did you -- how long were you an R&D
8 chemist of R.J. Reynolds?
9 A My C.V. will reflect that more accurately,
10 possibly, than I can remember, but I would say, if memory
11 serves, three or four years.
12 Q All right. I'll mark what I have as
13 Exhibit 579, which is a copy of a C.V. dated March 1997.
14 We have had some discussion off the record that you
15 probably have a more current C.V. This is the only one I
16 have and the only one I've been able to locate.
17 (Exhibit 579 was marked for identification.)
18 BY MR. HULBURT:
19 Q Is -- let me ask you about that first.
20 Is there a more current C.V. that you have
21 prepared at some time?
22 A I recall one specifically dated July 1998. I
23 believe that is the most recent one that I've prepared.
24 Q Would the July 1998 be the next one after
25 this March '97?
26 A I'm not sure.
27 Q Can you tell me what additions, deletions,
28 changes would need to be made to March '97 to make it more
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1 current today?
2 A Well, there would be no deletions. There
3 would simply be a chronological progression and addition
4 of certain things. Probably in the area -- well, in the
5 areas of publications and presentations, there may be some
6 additions. I can check real quick in terms of the
7 professional experience.
8 Yes, this one shows the current level as
9 master scientist. So there would be an addition there
10 that would reflect promotion to principal scientist.
11 That's about it.
12 Q So in addition to changing your title from
13 master scientist to principal scientist, there would be
14 additional publications and presentations?
15 A Any that were made would have been added to
16 the C.V., yes.
17 Q Right.
18 Would there be additional publications and
19 presentations relating to the subject of secondhand smoke
20 or environmental tobacco smoke that are not reflected on
21 this March '97 C.V.?
22 A I'll take a moment to review it.
23 Q Sure.
24 A Yes, there would be some addition.
25 Q Could you tell me what they are.
26 A I'll do the best I can.
27 Q How many additional publications are we
28 talking about?

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1 MR. KODSI: Chris, let me just interrupt
2 because this may make this easier. We also were provided
3 yesterday with a document that looks like this, an RJR ETS
4 bibliography. I don't know if you have that with you.
5 MR. HULBURT: Right. I've seen this.
6 MR. KODSI: That would contain all of
7 Dr. Ogden's articles up to, I think, last month that would
8 not be on his C.V., because that's a bibliography for the
9 entire company. So that may help you.
10 Now, obviously, all those articles won't
11 start with Ogden because he's not the first author on
12 everything. But if you want to show that to the witness,
13 it may make it easier for him to answer the question and
14 move along a little faster.
15 MR. HULBURT: All right. That's good.
16 Let's mark this as Exhibit 580, which is a document
17 entitled "RJR ETS-Related Publications."
18 (Exhibit 580 was marked for identification.)
19 BY MR. HULBURT:
20 Q Is that a document that you have seen before?
21 A Yes. This is a document that I created.
22 Q What was its purpose? What were you
23 intending to put into this document, Exhibit 580?
24 A I was intending to put into this document
25 publications that were co-authored by R.J. Reynolds
26 scientists and engineers that are responsive to
27 environmental tobacco smoke research and publications.
28 Q It's dated on the first page down there.
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1 What does it say, June 30th?
2 A Last date is 6/30/00.
3 Q All right. Does this document then include
4 all of the articles that would be added to your C.V.
5 following March 1997 to make it more current?
6 A Yes, it should.
7 Q Does this -- Exhibit 580, does it include
8 presentations that would be added to the C.V., or we're
9 really just talking about publications?
10 A No. This does not include presentations. It
11 is just publications.
12 Q All right. Can you, maybe by number, just
13 tell me the article number of Exhibit 580 what should be
14 added to your C.V. to update the publication list in the
15 C.V.?
16 A Sure. Let me run through it just line by
17 line to make sure I don't miss any.
18 Okay. There's one that strikes me right off
19 that's actually missing from both of these, and it's very
20 recent. It's similarly entitled to No. 59 in document
21 580. The title on 59 is "Method for Calculating
22 Olfactometer Output, Part 1, Acetic and Propionic Acids."
23 There is a companion Part 2 of that that has just been
24 accepted for publication. So it should be in my C.V. as
25 in press.
26 Q It has been accepted for publication by what
27 journal?
28 A The Analyst.
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1 Q The same as Part 1?
2 A Not exactly, no. It's a sister publication.
3 Q Is The Analyst a peer-reviewed journal?
4 A Yes, it is. It's one of the journals of the

5 Royal Society of Chemistry in the UK.
6 Okay. Here's another one that should be
7 added, which is No. 69 in document 580, that Nelson is the
8 first author, "Composition of Environmental Tobacco Smoke
9 from International Cigarettes Part II: Nine Country
10 Follow-Up."
11 The Part I to that is in my C.V. and also in
12 this document 580. And that was published in '97.
13 Here is an additional one, No. 106 in
14 document 580. Ogden is the first author. "Effect of
15 Lighting and Storage Conditions on the Stability of
16 Ultraviolet Particulate Matter, Fluorescent Particulate
17 Matter, and Solanesol," published in 1998.
18 Here's an additional one that's No. 134 in
19 document 580. Smith is the first author. "Tobacco
20 Smoking and Atherosclerosis," is the title, published in
21 JAMA in 1998.
22 That's all that I see from document 580 that
23 should be added to my C.V. to bring it up to date for
24 publications.
25 Q Are there any more articles like the one
26 you've mentioned that's going to be in The Analyst that
27 you think don't show up on either list but that you think
28 should be added to your C.V.?
29 Vail, Christians & Associates (619)544-8344 24
30 A No, there's nothing that I can recall that
31 is -- that has been published or accepted for publication
32 that should be on those lists. This is a complete
33 accounting, to the best of my recollection.
34 Q Are there additional presentations that you
35 would add to your C.V., Exhibit 579, to make it more
36 current?
37 A Yes.
38 Q Give me some estimate of the number, total
39 number.
40 A Probably about four.
41 Q All right. Can you tell me what they are?
42 A I can try. There would have -- oh, no. It's
43 on there. Sorry. The presentation I was expecting --
44 okay. There were two -- there were three presentations
45 that were made in '99 that I know should be added here.
46 Two of them were virtually identical, just
47 presented in two different -- at two different meetings.
48 There would have been a presentation on determination of
49 NNAL in smokers' urine that would have been presented at
50 the 1999 Tobacco Science Research Conference and also at
51 the CORESTA Smoke and Technology Meeting.
52 Q The same presentation, two conferences?
53 A That's correct. Virtually identical
54 presentations.
55 Q Okay.
56 A There may have been slight differences, but
57 nothing substantive.
58 Vail, Christians & Associates (619)544-8344 25
59 Q Okay.
60 A There was also -- oh. There was also a
61 presentation that reminds me of another publication that I
62 don't believe is on the list. Let me check that just to
63 be sure.
64 Sorry. I believe I missed a publication.
65 Can I pick that up while it's on my mind?
66 Q Uh-huh.
67 A No. 94 in document 580 is a book chapter.

10 Ogden is the first author. "Nicotine in Environmental
11 Tobacco Smoke." It was published in a book in 1999. That
12 should be added as well.

13 There would have been a derivative
14 presentation, oral presentation, made of the contents of
15 that book chapter that would also have been presented at
16 the 1999 Tobacco Science Research Conference. And that's
17 all that comes to mind right now as far as presentations
18 between 1997 and today.

19 Q All right. Thank you.

20 Have we then covered everything that we would
21 need to do to update the March '97 C.V.? We've got you
22 with your correct title. We added articles, and we added
23 presentations.

24 A Right. That would be the best recollection
25 I can put forward on the additions to those three areas.
26 Right.

27 Q Okay. In your time at R.J. Reynolds, have
28 you had any particular focus or emphasis in your work?
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1 A Yes.

2 Q What has that been?

3 A The study of environmental tobacco smoke.

4 Q How long have you been involved in the study
5 of environmental tobacco smoke?

6 A Since I was hired in October of 1985.

7 Q Had you ever studied environmental tobacco
8 smoke before going to R.J. Reynolds?

9 A No.

10 Q All right. Does the -- the C.V. correctly
11 sets forth your education?

12 A Yes, it does.

13 Q So from this, I can see that you got a
14 Bachelor of Science in chemistry at Emory and Henry
15 College in 1980 and also a Bachelor of Science in applied
16 mathematics at the same time; is that correct?

17 A That's correct.

18 Q And then continued your education at Virginia
19 Polytechnic Institute & State University to get a Ph.D. in
20 analytical chemistry?

21 A That's right.

22 Q Was that continuous from '80 to '85 you were
23 pursuing that study?

24 A Yes. There was no lapse there.

25 Q All right. And then immediately upon
26 completing your Ph.D., you went to work for R.J. Reynolds?

27 A That's correct.

28 Q Okay. Have you ever worked for any tobacco
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1 companies other than R.J. Reynolds?

2 A No.

3 Q Since completing your Ph.D. in 1995, have you
4 been employed by anyone at any time other than R.J.
5 Reynolds?

6 MR. MILES: Counsel, did you say 1995?

7 MR. HULBURT: I don't know. I didn't intend
8 to.

9 BY MR. HULBURT:

10 Q Since completing your Ph.D. in 1985, have you
11 been employed by anyone other than R.J. Reynolds?

12 A No.

13 Q Do you have any further formal education
14 besides what's listed here on Exhibit 579?

15 A No. I can't think of any. No formal
16 education in terms of attending universities or taking
17 classes that would be ongoing education from attending
18 seminars and training classes that would be relevant to my
19 field of work. But not in a university or an academic
20 setting.

21 Q All right. As principal scientist at R.J.
22 Reynolds, does that mean that -- as a principal scientist
23 assigned to a certain issue or a certain study or a
24 certain scientific field, or how is the -- how are the
25 categories of principal scientists broken down at R.J.
26 Reynolds?

27 A Well, a principal scientist is not assigned
28 to a certain field. A principal scientist -- or, rather,
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1 I should say, a scientist is elevated through promotions
2 to the level of principal scientist because of
3 demonstrated expertise in a certain field.

4 So they get there because of expertise in a
5 field. They don't get there and then -- they're not
6 assigned an expertise or an area to work in.

7 Q Is your work as principal scientist any
8 different than your work was as master scientist, or is it
9 just a promotion and a change in title?

10 A My work is not substantively different.
11 There would be increasing responsibilities in that role,
12 but it is not a major change. It's more of an
13 evolutionary change and not a revolutionary change.

14 Q What do you mean by that?

15 A Well, it evolved a step at a time. So you
16 move up the ladder, so to speak. There was not a dramatic
17 change in job responsibility or reporting structure or
18 anything else that accompanied the move from master
19 scientist to principal scientist. It was just a step in
20 what I would call the evolutionary chain of a professional
21 career. It's not a major job change in any way.

22 Q Are there any other principal scientists at
23 R.J. Reynolds who are also focused on the study of ETS?

24 A I'll have to reflect on that for a minute.
25 There are other principal scientists in the R&D
26 department. Undoubtedly, there are some that would have
27 expertise in the area of ETS, possibly, or a tangential
28 area, but there are none others that have principal
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1 responsibility in the ETS area.

2 Q All right. Is there a senior scientist who
3 is focused on the study of ETS at R.J. Reynolds?

4 A When you say "senior scientist," do you mean
5 in the senior chemist category that I gave you earlier?

6 Q Senior principal scientist. I was trying to
7 refer to the hierarchy above you.

8 Is there somebody above you or with a title
9 above yours who is, like you, focused on the study of ETS?

10 A No, there is not.

11 Q Would you be the person at R.J. Reynolds,
12 then, who has the highest seniority in the study of ETS?

13 MR. KODSI: Object to the form to the extent
14 the "study of ETS" might be a little vague. There might
15 be specific issues within that.

16 But you may answer, Dr. Ogden.

17 THE WITNESS: There is no one else within the
18 R&D organization who has an equivalent or higher technical
19 title whose primary responsibility is the study of ETS.

20 And having said that, I may have lost track
21 of your exact question.
22 BY MR. HULBURT:
23 Q I think you answered it.
24 A Okay.
25 Q Thank you.
26 Do you have other scientists and staff and
27 senior staff who are under you in the course of your study
28 for ETS -- the study of ETS?
Vail, Christians & Associates (619)544-8344 30
1 A Yes.
2 Q How many -- how many people fall into your
3 group of your study of ETS at R.J. Reynolds?
4 A Okay. The people that report to me, some of
5 them do things in addition to ETS, and some of them do
6 things that are primarily not ETS. So my working group
7 does not only do ETS. So there are -- I'd have to count
8 up in my mind here.
9 I believe -- I would say that five people
10 working for me have done some work or currently do some
11 work in the area of ETS.
12 Q Can you describe for me their positions,
13 their titles?
14 A Sure.
15 Q For instance, there are one or two
16 scientists, one or two staff. Can you give me that sort
17 of breakdown.
18 A There is one senior staff pharmacologist.
19 There is one senior staff chemist. There is one chemist
20 2, which is a level below what we talked about earlier.
21 And there are two -- although they don't have the exact
22 title, and I may not be able to quote them exactly --
23 they're research technicians -- I think one of them -- let
24 me restate that. One of them is a research technician,
25 and one of them is a laboratory technician.
26 Q Your C.V., Exhibit 579, describes that since
27 June 1995, you've been a visiting professor of chemistry
28 at Virginia Polytechnic.
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1 Is that still true?
2 A That is still true, yes.
3 Q What are your responsibilities at Virginia
4 Polytechnic?
5 A A number of years ago, R.J. Reynolds
6 established a post doctoral fellowship position with the
7 university, which I prefer to refer to it as Virginia
8 Tech. It's easier to say. But the correct name is, as
9 you've stated, Virginia Polytechnic Institute.
10 We established a post doctoral fellowship
11 position and funded that position. It is a named
12 fellowship position. It's the RJR Kurt Grob Memorial
13 Fellowship. In that capacity, we have funded three post
14 doctoral fellows, one of which worked at the university in
15 the professor's laboratory there. Two of those worked at
16 RJR in the R&D department. One of those worked in my
17 laboratory.
18 So as mentor of that post doctoral fellow, I
19 carry the title of visiting professor of chemistry.
20 Q During what period of time or for how long of
21 a time was that post doctoral fellow working under your
22 mentoring?
23 A For approximately the previous two years,
24 and, in fact, he just left within the last month -- or

25 went within the last month to six weeks.

26 Q Does being a visiting professor of chemistry
27 at Virginia Tech involve teaching any classes?

28 A No, it does not.

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1 Q Okay. So it really have -- is having this
2 fellow essentially doing a clinical internship in your
3 lab; is that right? Maybe you don't like "clinical
4 internship."

5 A Clinical internship doesn't quite ring true.

6 Q It is this fellow working in your lab under
7 your supervision?

8 A Right. This post doctoral fellow is an
9 employee of the university. And in this particular
10 instance, he worked in my laboratory all on research
11 projects of mutual interest.

12 So in this instance, our particular
13 laboratory was, in essence, a satellite laboratory of the
14 university, which is a way many people choose to think of
15 that. But the post doctoral fellow is an employee of the
16 university, but he works full time in our laboratory. And
17 I would be his mentor and supervisor.

18 Q Have you had any other responsibilities as a
19 visiting professor of chemistry besides this fellow that
20 you've just described?

21 A Well, yes. Slightly. In terms of
22 administrative duties, I was the one who established and
23 set up this program so I would be the liaison person
24 between R.J. Reynolds and the university for establishing
25 contracts, funding, you know -- processing additional
26 funds into the program, any issues that may arise in terms
27 of benefits or salary or promotions or things like
28 that. But those would be just administrative duties in

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1 administering the program.

2 Q Is there anything else that you would put in
3 any responsibilities you've had through the program at
4 Virginia Tech?

5 A Not that come to mind, no.

6 Q Have you testified as an expert witness
7 before in deposition or trial?

8 A Yes, I have.

9 Q Of the three to four prior depositions over
10 three to four years, can you tell me whether those were
11 expert depositions or in some other capacity?

12 A The majority of those I would characterize as
13 being expert depositions.

14 Q Can you tell me the names of the cases, three
15 to four cases, where you gave prior deposition testimony?

16 A I can try.

17 Q Okay. Please.

18 A There was a deposition in the case I would
19 refer to as Broin.

20 Q How do you spell Broin?

21 A B-r-o-i-n.

22 There was a deposition in the case of the
23 State of Oklahoma Attorney General. I'm not sure that one
24 would have been an expert deposition. And as based on the
25 previous discussion we've had here, sometimes a
26 distinction may be blurred.

27 Q I fully appreciate that.

28 A There was a deposition, I believe it was in

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1 the Dunn, Wiley case. I remember the attorney's face, but
2 I don't remember exactly which action that was in. And
3 that's all that I can -- that come to mind right now.

4 Q Where was the Broin case?
5 A Where was it tried?
6 Q Yeah.
7 A In Miami, Florida.
8 Q In each of these -- that's three.
9 Can you think of any -- you can't think of
10 another one?
11 A I'm thinking there's a fourth, but I'm not
12 sure, as I sit here, what that one was.

13 Q All right. And in each of these three, were
14 you testifying as an employee of R.J. Reynolds? What I'm
15 trying to distinguish in my mind now is that you're
16 testifying as an employee of R.J. Reynolds rather than you
17 were hired independently by somebody to come testify as
18 their expert.

19 A That strikes me as a correct statement, yes.
20 I was not -- I was not a consultant or anything else. I
21 was there in my role as an employee of R.J. Reynolds but
22 also one who had extensive experience and expertise in
23 studying environmental tobacco smoke.

24 Q Okay. And let me ask the same kind of
25 questions, then, about your court testimony.
26 Can you tell me the names of the cases where
27 you've testified in court?
28 A Sure.

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1 The first one would have been Broin, the case
2 in Miami, Florida. It would have been testimony in the
3 Dunn, Wiley case in Indiana, and also in the Butler case
4 in Mississippi.

5 Q And, similarly, those would have been times
6 where you were testifying in your capacity as an employee
7 for R.J. Reynolds?

8 A As you characterized it in a previous
9 question, I would say that's true.

10 Q Have you done any work specifically in this
11 case in order to prepare for today's deposition as an
12 expert witness on behalf of R.J. Reynolds Tobacco Company?
13 A Yes.

14 Q What have you done to prepare?
15 A I reread portions -- some portions of
16 previous publications that I had written or previous
17 documents that I had written that had been supplied to
18 plaintiffs' counsel.

19 I read a couple of additional manuscripts
20 from the peer-reviewed literature.

21 And I read the deposition of Richard
22 Carchman.

23 Q When you say you reread some publications,
24 that would include publications both that you wrote and
25 that others wrote?

26 A I tried to distinguish those two in the three
27 categories I gave you. The first part of my response was
28 just things that I and Reynolds had written over the years.

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1 Then the second case was publications that
2 other scientists, non-Reynolds scientists would have
3 written. And there were only a couple of those. So I
4 tried to make that distinction in my first answer.

5 Q I'm trying to clarify. I have you saying you

6 reread some publications, you reread some documents. You
7 read additional manuscripts. I want to try to be more
8 specific as to what do those different categories mean in
9 your answer. So let me go back.

10 The idea of rereading some publications, that
11 was publications that either you or R.J. Reynolds' people
12 had written?

13 A That's correct.

14 Q When you say "reread some documents," what
15 were you referring to there?

16 A I distinguished the documents from
17 publications. These would be things that, for example, a
18 Reynolds submission to OSHA or Cal EPA, something like
19 that, in which I would have participated. So those are
20 Reynolds documents I would say rather than manuscripts or
21 publications.

22 Q I understand.

23 A And also read some press releases and other
24 public domain sorts of things, reviewing the RJR website,
25 for example, as another example of that. And that's what
26 I would characterize as both my publications and Reynolds
27 documents.

28 Q I was -- I was provided something entitled
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1 "Bibliography of Documents Relied Upon by Dr. Michael
2 Ogden." Let me call this Exhibit 581. It's something
3 that we received, I guess, on Monday from Mr. Kodsi.
4 (Exhibit 581 was marked for identification.)
5 BY MR. HULBURT:
6 Q You'll have to ignore the initials in the
7 upper right-hand corner. That happened in my office. I
8 apologize. I don't have a clean copy without those
9 initials. But let's call this Exhibit 581.
10 Is this a document that you've seen before?
11 MR. KODSI: Do you just have the one copy?
12 MR. HULBURT: I don't have a clean copy. I
13 have other copies that also have notes on them.
14 MR. KODSI: Okay.
15 THE WITNESS: Substantively, yes, I've seen
16 it. This looks like a fax copy. It has some header
17 information. And, as you noted, the marginal notations
18 that I don't believe I have seen. But the original, I
19 would say I have seen, yes.
20 BY MR. HULBURT:
21 Q Did you prepare the original?
22 A I participated with Mr. Kodsi's office to
23 prepare this original, yes.
24 Q Other than you and Mr. Kodsi's office, was
25 anyone else involved in the preparation of Exhibit 581? I
26 appreciate and acknowledge the facsimile notations and the
27 initials in the upper right-hand corner. I'm talking
28 about the substance of the document.
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1 A I'm sorry.
2 Can you rephrase your question?
3 Q Did anyone other than you and Mr. Kodsi's
4 office participate in preparing the substance of
5 Exhibit 581?
6 A I can't exclude the possibility that I may
7 have asked an associate to obtain copies of some of these
8 for me, but they would have done so under my direction.
9 Q When was the original of Exhibit 581 prepared?
10 A I would say -- I couldn't point to a specific

11 point in time. I would say over the previous month or two.
12 Q When did its preparation begin?
13 Approximately a month or two ago?
14 A No, I don't -- well, I wouldn't characterize
15 it in that way. I couldn't even put a date on its
16 beginning. Many of these citations are Reynolds
17 documents, publications that I've co-authored, and they
18 would be constant among the various transcripts or
19 depositions and testimony that I've given before. So it
20 looks largely similar to a bibliography relied upon in
21 many other cases, with some things specifically added for
22 this case.
23 Q Okay. I was going to ask you that.
24 Is this something that has been sort of a
25 work in progress over time and it was updated or revised
26 for purposes of this case?
27 A That seems to me to be a fair
28 characterization, because many of these documents, as I
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1 said, are Reynolds publications. There are other
2 publications of note in the field of environmental tobacco
3 smoke, chemistry, and exposure. And it's a historical
4 account, and most of that -- much of this and other, you
5 know, has gone into my career in studying ETS. So, yeah,
6 it's a living document in that regard.
7 Q Okay. I'm taking this page off. It doesn't
8 need to be part of the exhibit. I saw that as he was
9 flipping through it.
10 MR. KODSI: Sure.
11 MR. HULBURT: The exhibit is actually 11
12 pages of articles and publications.
13 BY MR. HULBURT:
14 Q Is that right?
15 A The last page you're showing me is
16 No. 11. But as you ask the question, I have to count
17 them.
18 That's correct.
19 Q Now, I want to try to understand what --
20 what's your understanding of what this document in the
21 context of this case is intended to represent?
22 A I think this would be a reflection of
23 documents that I would rely upon to formulate or
24 substantiate any scientific or expert opinions that I
25 would offer in this case.
26 Q When was the document completed?
27 A I don't know that I can answer that
28 question. I'm not sure.
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1 Q Can you give me your best estimate?
2 A Let me look for a couple of things that would
3 have been added recently.
4 No, I don't think I really can. Other than
5 what I characterized before, I think it would have been
6 completed within the last month or so. But that's
7 speculation. I really don't know.
8 Q Did you see a final version of it before it
9 was produced to the plaintiffs in this case? Perhaps in
10 order to say, yes, this is the complete list of the
11 documents that I intend to rely on?
12 A No. Actually, I wouldn't characterize it
13 that way. There was a document that I reviewed
14 previous -- you know, substantively this document. There
15 were two papers or publications that were added more

16 recently, and those were added -- and I doubt that I saw
17 the document -- between the time those citations were
18 added and you received it. But I have seen it today in
19 its final form.

20 Q And the two that were most recently added,
21 can you identify those for me.

22 A Sure.

23 At the bottom of page 2, there's a citation,
24 first author, Gilpin, G-i-l-p-i-n. I'm not sure how the
25 other one is going to be cited. So it may take me a
26 moment to find it.

27 I don't remember the -- these appear to be in
28 alphabetical order by the first author's name. I don't
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1 remember the first author's name, and I'm not seeing it
2 right off. So I can try to go through it again here.

3 Q Can you tell me the title or something close
4 to the title of the article you're looking for?

5 A Well, this author that I just gave you,
6 Gilpin as the first author, that person was also a
7 co-author of this other document. It was largely, as I
8 read it, the same sorts of things. This citation is a
9 manuscript. The other looked to be a report or a status
10 report that would have been prepared for the agency that
11 provided the funding or something like that. So it was
12 largely the same subject matter. And I don't -- I don't
13 believe -- in fact, I'm pretty sure that person was not
14 the first author but was a co-author.

15 Q The Gilpin article you referred to is
16 entitled "Home smoking restrictions: which smokers have
17 them and how they are associated with smoking," published
18 in Nicotine & Tobacco Research; is that right?

19 A Well, the title here. I'm not sure I heard
20 you say the last word. "Home smoking restrictions: which
21 smokers have them and how they are associated with smoking
22 behavior," published in Nicotine & Tobacco Research in
23 1999.

24 Q All right. Is that publication a
25 peer-reviewed journal?

26 A That's not a journal that I read routinely,
27 nor have I ever read routinely. I'm not familiar with
28 their editorial policy. The document, as I read it,
Vail, Christians & Associates (619)544-8344 42
1 appeared to be of the same format that most peer-reviewed
2 documents take. But I'm making an assumption that it is.
3 I don't know for a fact.

4 Q Is that journal, Nicotine & Tobacco Research,
5 something that you've ever read before or ever read an
6 article from it before this Gilpin article?

7 A Not to my knowledge.

8 Q When was the Gilpin article added to this
9 bibliography, Exhibit 581?

10 A I don't know.

11 Q Can you give me your best estimate?

12 A I would say within the last one to two
13 months, but I'm not sure.

14 Q Tell me the -- tell me how it came about.
15 Is this an article that you discovered or
16 that somebody brought to your attention, or how did you
17 become aware of the Gilpin article and how was it decided
18 that that should be put on this list?

19 A As Mr. Kodsi and I discussed issues relevant
20 to this case, one of the issues that came up was potential

21 differences among the residents of the state of California
22 versus other states in the union, possibly where I had
23 made measurements and observations and studied ETS.

24 And the issue that he and I were addressing
25 was what would be some potential differences that would be
26 unique to California.

27 This document is one that describes surveys
28 done in the state of California that appeared to be
Vail, Christians & Associates (619)544-8344 43
1 responsive to that. And that's why it's here and what its
2 content is.

3 Q Do you know E.A. Gilpin?
4 A No, I don't.

5 Q Have you ever had any contact with E.A.
6 Gilpin other than this article and the other one where he
7 or she might be listed as a co-author?

8 A No. I was not familiar with the name prior
9 to this.

10 Q Can you tell me on behalf of what agency was
11 this work done that resulted in this publication?

12 A I have an impression, but I couldn't give you
13 an exact agency name.

14 Q Tell me your impression. I'm asking because
15 in the, you know, day and a half or so that I had this
16 document, I couldn't find that article. So I'm interested
17 in any kind of identifying stuff you can give me about it.

18 A I believe the -- in the sister publication or
19 the document that I referred to was what I would have
20 broadly characterized as a status report or a result of,
21 you know, progress of the funding. And the funding, as I
22 remember it, was state of California tobacco controlled
23 type of funding.

24 So it appeared to be a state agency or at
25 least funding that came from a state agency. I presume
26 these authors are associated with the university, but it
27 appeared to be state funding from California.

28 Q And do you happen to have that article with
Vail, Christians & Associates (619)544-8344 44
1 you here?

2 A No, I don't.

3 Q What about that article was useful or of
4 significance to you in any of the opinions that you have
5 formulated in this case?

6 A Some of the information in that article that
7 I found interesting was the research -- survey type of
8 research that they had conducted, which was survey of home
9 restrictions among populations, random digit dialing type
10 of screening survey where they asked respondents to
11 characterize their restrictions, if any, on smoking in
12 their home.

13 I'm broadly aware of smoking restrictions
14 that exist in the state of California in public places.
15 This was interesting because their research suggested that
16 there was what appeared to me to be a higher than typical
17 for the U.S., anyway, level -- or degree of restrictions
18 on smoking in homes.

19 So I took that information as an indication
20 that not only is smoking widely restricted in public
21 places in California, but also there appeared to be an
22 above average degree of home smoking restrictions in the
23 state as well.

24 Q Can you be more specific and tell me what the
25 data or the conclusions of this Gilpin article were that

26 you're referring to? Are there numbers that you have in
27 mind or a description of restrictions or something that
28 caused you to draw this conclusion that there are higher
Vail, Christians & Associates (619)544-8344 45
1 than normal home smoking restrictions in California?
2 A Other than paraphrasing the conclusions as I
3 just did previously, I don't recall any specific numbers
4 from the article.
5 Q Can you tell me anything -- share with me any
6 of the details of the article that have impressed you
7 that, from there, you learned that California is different
8 from the rest of the nation in this particular way, by
9 some factor or by some percentage, or give me -- I'm
10 seeking any sort of more specificity about this article,
11 again, because of something that I couldn't find in the
12 day and a half that I had your list.
13 A Well, part of the article was an attempt to
14 associate smoking restrictions in the home with success
15 rate with smokers quitting smoking. I found that
16 interesting.
17 The article suggested to me -- and, again, I
18 can't quantify that for you -- that the awareness
19 campaigns that were going on in the state of California,
20 the public postings and the various advertisements seemed
21 to be having the desired effect, that there was a great
22 degree of awareness within the state about environmental
23 tobacco smoke. I can't quantify that in terms of in any
24 greater detail than that at this setting. It's been, you
25 know, some time since I've read that article.
26 Q How much time?
27 A Probably two weeks.
28 Q Was it -- I want to understand part of what
Vail, Christians & Associates (619)544-8344 46
1 you just said in your previous answer.
2 Was it your understanding that the focus of
3 the effort that this Gilpin article was talking about was
4 that an increase in restrictions, smoking restrictions in
5 the home, were reduced smoking? That's what they were
6 trying to measure or trying to look at?
7 A That seemed to be one aspect of it. They
8 attempted to do some statistical correlations of the
9 degree of smoking restriction in the home versus the --
10 what I would characterize as what the authors
11 characterized as a successful quit rate among smokers who
12 desired to quit.
13 And there seemed to be a correlation there
14 that suggested to these authors that smoking restrictions
15 in the home was a useful tool in helping smokers that
16 desired to quit to accomplish their goal.
17 Q Okay. But the substantive information that
18 you were interested in in that article as it relates to
19 this case was some sort of quantification of the number of
20 California households that have smoking restrictions.
21 Is that a correct statement?
22 A That information is available in the paper.
23 They also broke it down by variety of minority or ethnic
24 groups.
25 Q Okay. And that's the kind of specific
26 information that I'm trying to press you for.
27 A Okay.
28 Q So I want to do it one last time.
Vail, Christians & Associates (619)544-8344 47
1 Can you share with me any of the details on

2 this substantive information regarding the prevalence of
3 smoking restrictions or the demographics of smoking
4 restrictions as revealed in this Gilpin article?

5 A No, I really can't. I remember they looked
6 at it in certain ways. I remember their data suggested
7 some differences in certain areas, but I can't quantify
8 those as I sit here today, no.

9 Q This is maybe asking one question more than
10 this subject deserves, but -- I appreciate you can't tell
11 me exactly, but can you share with me your impressions or
12 your -- the general message of this Gilpin article? Maybe
13 you're not going to give me the exact percentage, but do
14 you have any of that sort of detailed information
15 available to you in your mind?

16 A Not to any greater detail than I've already
17 given you.

18 Q Okay. Now, this Exhibit 581 which lists
19 documents that you have relied upon or intend to rely upon
20 in this case, would it be fair to say that the documents
21 that you went back and reviewed in order to prepare for
22 your deposition, that they're all listed in Exhibit 581?

23 A The Carchman deposition in this case that I
24 read is not listed here.

25 Q Okay. I understand that. Let me be more
26 specific in my question.

27 You described that you reread some
28 publications, either that you wrote or that R.J. Reynolds
Vail, Christians & Associates (619)544-8344 48
1 wrote.

2 Are all of those publications listed in
3 Exhibit 581? And just to jump ahead, I'm interested in
4 how many were there, and then I'm interested in having you
5 tell me which ones they are.

6 A Okay. In my previous answer to one of your
7 questions, I indicated that I had reviewed some Reynolds
8 press releases and advertisements and website type of
9 information. I don't see any of that listed here.

10 Q I know. Right now, I'm just on the part of
11 your answer of what you did to prepare as an expert, in
12 part, was you reread publications either that you
13 published or that R.J. Reynolds published?

14 A Uh-huh.

15 Q So let me ask the first question.
16 How many of those articles were there that
17 fall into that category?

18 A I would say not more than two or three.

19 Q Okay. What are they? Please identify those
20 articles or those publications.

21 A Okay. Sure.

22 On page 3, there is a citation to Heavner
23 et al., "Determination of VOCs and RSP in New Jersey and
24 Pennsylvania Homes and Workplaces," 1996. I had a brief
25 review of some of the data in that. I didn't reread the
26 text reports. It was just to look at some of the data
27 tables.

28 Same thing with -- where is it? Page 4,
Vail, Christians & Associates (619)544-8344 49
1 Jenkins et al., "Exposure to Environmental Tobacco Smoke
2 in Sixteen Cities in the United States As Determined by
3 Personal Breathing Zone Air Sampling," published in 1996.

4 And I should interject here that there are a
5 number of these, as I go through here, that I have
6 referred to over the course of the last month or two. And

7 I couldn't honestly tell you whether it was in regards to
8 this case or not. Many of these documents I refer to on
9 an ongoing basis, just to perform my job in studying ETS.
10 So I've had occasion to pull out others of
11 these, but I couldn't say that it's specifically in regard
12 to this case.

13 Q Yeah. The question right now, as you know,
14 is in preparing yourself to testify as an expert witness
15 in this case, what articles did you go back and reread?

16 A Right. And I'm attempting to answer that.
17 I've given you two.

18 Q Thank you.

19 A Those are that I specifically looked at with
20 regards to this case.

21 Q Right.
22 Are there any others?

23 A I'm looking through the list to try to
24 refresh my memory.

25 Q Okay.

26 A I looked at some of the data in an article on
27 page 6, Ogden and Martin, "Use of Cigarette Equivalents to
28 Assess Environmental Tobacco Smoke Exposure."
Vail, Christians & Associates (619)544-8344 50

1 I reviewed some of the data, the next
2 citation, Ogden et al., "Multiple Measures of Personal ETS
3 Exposure in a Population-Based Survey of Nonsmoking Women
4 in Columbus, Ohio."
5 I've looked at the next one as well, Ogden,
6 "Occupational exposure to environmental tobacco smoke," in
7 JAMA, 1996.
8 There's a global reference here to also
9 anything that's in my attached C.V. So we may have to
10 look at that one again in a minute to see if there's
11 something else that's different or in addition to this
12 list.

13 Here's the other paper I was -- the other
14 report I was looking for that was the companion to the
15 Gilpin paper. It's on page 8. Pierce et al. The title
16 is "Tobacco Control in California: Who's Winning the
17 War? An Evaluation of the Tobacco Control Program, 1989
18 to 1996." It was published in -- the report date is
19 1998. That's the one I couldn't find earlier.

20 Q Okay. I appreciate that.
21 Is that an article that also fits into this
22 category of something you went back and read in order to
23 prepare as an expert in this case?

24 A Yes.

25 Q Okay. And the Gilpin article too, I take it?

26 A Right. This is Pierce et al. But I'm sure
27 Gilpin is a co-author of that report as well.

28 Q You didn't mention it. But just to be fair
Vail, Christians & Associates (619)544-8344 51

1 to you, would you include the Gilpin article from page 2
2 as one of these articles that you went back to review to
3 prepare as an expert in this case?

4 A I thought I did mention that.

5 Q All right.

6 A I thought I did. But if I didn't, yes, that
7 is an article that I went back to review in that capacity.
8 I've reviewed the data of Pirkle et al.,
9 "Exposure to the U.S. Population to Environmental Tobacco
10 Smoke," recently. But, again, that's one of those I'm not
11 sure whether it was in the context of this case or not.

12 It's certainly relevant, as these are.
13 I've reviewed -- well, one I don't see here
14 is R.J. Reynolds' response to California EPA. The parts
15 of it that I did review are largely the same as what is
16 referenced here. "R.J. Reynolds Tobacco Company, Comments
17 to the Occupational Safety and Health Administration."
18 And there are a couple of citations to OSHA
19 comments, but I reviewed some Cal EPA Reynolds comments as
20 well. But I don't see that citation here specifically.
21 Q Are the R.J. Reynolds comments to the Cal EPA
22 report, documents that you are also relying on in this
23 case as an expert?
24 A Sure.
25 Q Is there anything else in Exhibit 581 that is
26 a document you that went back to reread in order to
27 prepare yourself as an expert for today's deposition?
28 A Nothing that comes to mind, as I sit here,
Vail, Christians & Associates (619)544-8344 52
1 that I can say with certainty I reviewed specifically for
2 the purposes of this case.
3 But, as I said earlier, many of these I -- or
4 I have occasion to review on an ongoing basis for a
5 variety of job-related functions as I study ETS.
6 MR. MILES: Counsel, we've been going about
7 two hours at this point. Whenever it's convenient to
8 break, could we do that?
9 MR. HULBURT: Sure. I think I was just so
10 happy to be going, I just wanted to keep going. We can
11 take a break right now. That's fine.
12 (Recess.)
13 MR. HULBURT: Okay. Back on the record.
14 BY MR. HULBURT:
15 Q Let's stay on this Exhibit 581, this list of
16 "Documents Relied Upon By Dr. Michael Ogden."
17 I also want to say I apologize -- as I said
18 off the record, I apologize during any of my earlier
19 comments where I kept referring to you as Mr. Ogden. That
20 was not intentional. I raise that because I've frequently
21 had lawyers opposite me who do that intentionally to my
22 Ph.D. witnesses. And they think that it's some sort of
23 trick or something to catch you or whatever. I was not
24 doing that intentionally.
25 This list, Exhibit 581, is this everything
26 that exists in your file? Is this the representation of
27 your file as an expert witness in this case?
28 MR. KODSI: Objection; assuming facts not in
Vail, Christians & Associates (619)544-8344 53
1 evidence.
2 THE WITNESS: I don't have a file in this
3 case, per se. I mean, I have files. This would not be an
4 exhaustive list of everything in my files, no. These
5 would be documents, as I've said earlier, that are
6 substantive. And, you know, understanding the chemistry
7 of ETS and exposures to ETS in the United States.
8 BY MR. HULBURT:
9 Q Well, for instance, I'm interested in knowing
10 whether you have any correspondence between you and any
11 lawyers related to your role as an expert witness in this
12 case. Let me just go on. I'll ask a cumulative question.
13 Whether you have any notes, whether you have
14 any e-mail communication related to your role as an expert
15 witness, whether you actually have a file that is your
16 file as an expert in the AESI case, or is Exhibit 581

17 really the representation of everything that is your file
18 in this case?

19 MR. KODSI: Objection; cumulative.
20 But to the extent you can answer, you can
21 certainly try.

22 THE WITNESS: If you want me to answer that,
23 you're going to have to take it piece by piece because I
24 don't want to misrepresent anything.

25 BY MR. HULBURT:

26 Q Fair enough.
27 A So if you'll go one at a time, we'll see what
28 we can do.

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1 Q Sure.
2 Do you have any correspondence between you
3 and any of the lawyers related to your role as an expert
4 witness in this lawsuit?

5 A I have documents that have been provided to
6 me. I wouldn't characterize them as correspondence. For
7 example, I have a copy of my disclosure statement. Many
8 of these documents I provided to counsel. There is no
9 file of correspondence that I've kept. I mean, there have
10 been communications, of course, e-mails back and forth
11 trying to schedule dates, ETS. But I've not retained
12 those e-mails, to my knowledge. That would have been
13 related to simply tactical issues of scheduling dates and
14 what dates I'm on vacation and things like that.

15 Q Have you retained any e-mails between you
16 and any of the lawyers in the case related to your role as
17 an expert witness in this case?

18 A Any e-mails that I would have received would
19 have been related to what I call tactical issues.
20 Scheduling a meeting, hey, can we get together at a
21 certain time, can you give me some dates that you're
22 available for deposition. So, no, I would not have
23 retained those. And those are the only ones I recall that
24 were generated at any point in time. Just scheduling
25 meetings and finding available dates and that sort of
26 thing.

27 Q Have you retained any letters that you
28 received from any of the attorneys in the case related to
Vail, Christians & Associates (619)544-8344 55

1 your role as an expert witness?

2 MR. KODSI: Objection; lack of foundation.
3 THE WITNESS: I'm not aware of any letters
4 that I've received in this case.

5 BY MR. HULBURT:

6 Q Other than receiving the -- your designation
7 as an expert in the case, have you received any documents
8 of any kind from the attorneys?

9 A Could I ask you to read that back or restate
10 it. I missed the first part of that.

11 Q Yeah.
12 You said that -- you said earlier that I
13 received my expert designation; is that right? Did you
14 receive your expert designation from the attorneys?

15 A Yes. What I was referring to -- actually,
16 that wasn't one I was referring to a minute ago. I was
17 referring to the -- I suppose it was a notice from
18 plaintiffs on this side of what, you know, the issues that
19 were being asked were and, you know, the bullet, one, two,
20 three, here's what we wanted somebody to be responsive to.

21 Q The PMK notice?

22 A That may have been what that was. I'm not
23 sure of the exact lingo for the designation.
24 Q All right. What else besides that did you
25 receive from the attorneys in this case?
26 A I received the deposition of Dr. Carchman, a
27 copy of that.
28 Actually, there is a cover letter or memo
Vail, Christians & Associates (619)544-8344 56
1 from whoever shipped that, when that arrived. I probably
2 still have that. It was from a secretary in a law firm
3 somewhere in California. I don't know. Just here's a
4 copy of the Carchman deposition.
5 Q Okay. Does that memo or cover page have any
6 substantive information at all?
7 A No.
8 Q All right. So other than the deposition
9 notice with the categories, the Carchman depo, did you
10 receive anything else from the attorneys in this case?
11 A Not that I can recall, no.
12 Q Just so that we're clear, did you receive the
13 expert designation where you were identified as an expert
14 witness in this case? We talked about this already. But
15 I'm not sure whether you were clear on it.
16 A I'm not clear in terms of the various
17 designations as you're using them to refer to. If you've
18 got a document and I can see it, maybe I can say whether
19 I've seen it before or not.
20 Q Let me hand you what's entitled "Expert
21 Witness Declaration on Behalf of Phillip Morris
22 Incorporated, R.J. Reynolds Tobacco Company, Brown &
23 Williamson Tobacco Corporation, and Lorillard Tobacco
24 Company."
25 Page 11 is flagged because that's where it
26 refers to you.
27 And so the question is, is this a document
28 that you received from the attorneys in this case?
Vail, Christians & Associates (619)544-8344 57
1 A This is not a document that I have received
2 in that I don't have a copy of it, but I have reviewed
3 this particular page that relates to me. But I do not
4 have a copy of the document in its entirety.
5 Q When did you review the page that refers to
6 you?
7 A I last saw it yesterday. I don't recall when
8 I first saw it.
9 Q Did you play any role in preparing the
10 description of your anticipated testimony, which is found
11 on page 11 at line 17?
12 A Yes.
13 Q In what way? Tell me how that came about.
14 A These are statements that attorneys and I
15 would come to agreement and so on as to what I would be
16 prepared to testify about, what are my areas of
17 expertise. So these types of statements are -- I mean,
18 this language would have been hashed out over many months
19 preceding today. I can't give you a better
20 characterization of how that transpired.
21 You know, a document or a paragraph could
22 have been written. I would review that, make changes,
23 supply it back, and it would be an iterative process back
24 and forth. I have no specific recollection of -- beyond
25 that, of how that paragraph came about.
26 Q Other than the notice of the deposition and

27 the Carchman deposition and at some time reviewing this
28 expert designation declaration, are there any other
Vail, Christians & Associates (619)544-8344 58
1 documents that you've received from the attorneys related
2 to your role as an expert witness in this case?
3 A Not that I can recall, no.
4 Q Let me kind of expand the question a little
5 bit.
6 Are there any documents that you received
7 from some source other than the attorneys related to your
8 role as an expert witness? I'm not trying to go back and
9 refer to the articles that we've already talked about or
10 that are listed in the exhibits. But maybe you've
11 acquired some documents from some other place that didn't
12 come directly from the attorneys.
13 Is there anything else that you received like
14 that?
15 A Nothing that I can think of that would fit
16 that category at all, no.
17 Q Do you have any notes that would be your
18 notes related to your role as an expert witness in this
19 case? Handwritten, typewritten, computerized, whatever
20 way you might keep notes. Dictated. Anything.
21 A No, not that I can think of.
22 Q Did you take notes that you have no longer
23 retained?
24 A I would have taken some notes along the lines
25 of the e-mail correspondence I characterized earlier in
26 terms of setting dates and, you know, a note to myself. I
27 need to read this document or something like that. Like a
28 daily "to do" list, sort of an entry of -- in fact, I had
Vail, Christians & Associates (619)544-8344 59
1 one such just in reference to Exhibit 580, as you can see,
2 last dated 6/30. I had on my "to do" list to generate an
3 updated RJR ETS list. Which I would have done. And then
4 deleted the note to do that. But no substantive issues I
5 can think of.
6 Q Is this "to do" list something that you do on
7 your computer?
8 A No. Much like your document designation,
9 it's Post-it Note stuff on my computer screen or something
10 like that.
11 Q Were you instructed by any of the attorneys
12 not to keep notes related to your role as an expert
13 witness?
14 A No.
15 Q Were you instructed to not retain any of your
16 notes?
17 A No.
18 Q Were you instructed to not retain any of the
19 e-mails?
20 A No. Well, maybe I should say, along those
21 lines, I mean, within R.J. Reynolds, we have formal
22 document retention policies that every employee has a
23 responsibility for maintaining as regards a variety of
24 litigation. And I certainly comply with that document
25 retention policy that we have imposed on our own company.
26 But I don't regard e-mails related to
27 scheduling an 11 o'clock appointment as relevant. So I
28 don't retain those.
Vail, Christians & Associates (619)544-8344 60
1 Q How do the document retention policies of
2 R.J. Reynolds apply to any of the documents that we're

3 describing here as related to your work as an expert in
4 this case?

5 MR. KODSI: Objection; lack of foundation.

6 THE WITNESS: The R.J. Reynolds document
7 retention policy is one that requires all documents to be
8 retained -- all final versions of documents to be retained
9 that have bearing on any of the litigation that the
10 companies engaged in. I certainly respect that order and
11 comply with that.

12 I wouldn't say there's anything -- nothing
13 that -- let me rephrase that. There's nothing that I can
14 recall that is specifically -- has specifically been
15 implemented in the R.J. Reynolds retention policy that
16 regards this case specifically.

17 There were some previous case-specific things
18 that, you know, have gone into place and have expired as
19 litigation has moved forward.

20 BY MR. HULBURT:

21 Q How much time would you say you've spent
22 preparing for your testimony as an expert witness in this
23 case?

24 A 15 years.

25 Q I anticipated that answer as soon as I asked
26 the question. And so let me try to be more specific.
27 In your effort to go back to prepare for the
28 deposition, to do these things that we've been describing
Vail, Christians & Associates (619)544-8344 61
1 or talking about here this morning to get ready for your
2 testimony, how much time have you spent specifically on
3 this case?

4 A That's a difficult question to answer because
5 it's difficult for me to delineate, as I indicated
6 earlier, which document I might have read as a
7 responsibility in my ongoing job function versus something
8 specific to this particular case.

9 Q Give me your best estimate.

10 A I would say five to ten days.

11 Q A day being an eight-hour day?

12 A Sure.

13 Q How much of that time was spent talking with
14 the lawyers?

15 MR. KODSI: Objection; lack of foundation.

16 THE WITNESS: This is just a wild
17 speculation. I have no idea. I would say 20 to 30
18 percent of that.

19 BY MR. HULBURT:

20 Q Is that your best estimate?

21 A That's my best guess, yes.

22 Q Have you spent any time at any time in your
23 career at R.J. Reynolds where you have participated in
24 training sessions to testify?

25 A Yes.

26 Q How many times have you done that?

27 A Two or three seems to be about right.

28 Q When was the first time?
Vail, Christians & Associates (619)544-8344 62
1 A I'm not entirely sure. It would have been in
2 the early nineties. Somewhere between 1991 and 1994, I
3 would say. And that's about as good as I can get.

4 Q So that first time, let's talk about that.
5 Was that something done in-house at R.J.
6 Reynolds, or through some other company, or describe for
7 me what was done?

8 A There was a consultant to R.J. Reynolds that
9 was hired to lead that sort of an exercise. So I'm not
10 sure I would characterize it as entirely an internal RJR
11 type thing. But it was something sponsored by the
12 company.

13 Q Were there other employees participating with
14 you at the same time, or was it training particularly
15 focused on you?

16 A No. There were others as well.

17 Q How many were in the training session with
18 you?

19 A I would say a half a dozen as a guess.

20 Q Can you tell me the name of the company or
21 the name of the consultant that conducted the training?

22 A The name of the company, I cannot. The name
23 of the individual that I remember is Virgil Scudder.

24 Q Scudder with d's? S-c-u-d-d-e-r?

25 A I believe that's right.

26 Q And how long was the training? Over what
27 period of time?

28 A I really have a vague recollection of this.
 Vail, Christians & Associates (619)544-8344 63
1 So I'm giving you my best guess. I recall spending a
2 couple of hours with him in that type of session. It may
3 have been as much as a half a day. I just don't recall.

4 Q What was done? Can you describe for me what
5 the training was?

6 A Sure.

7 The one -- the instance that I remember most
8 clearly was in preparation for the R.J. Reynolds testimony
9 at the OSHA public hearings, and this would be a forum
10 that Mr. Scudder would have been, as my representation of
11 that, that he would have been hired to sort of lead that
12 discussion where the panel of Reynolds scientists would
13 stand and make the presentations that they intended to
14 give at OSHA.

15 It was an opportunity for not only -- well,
16 primarily, the exercise, as I recall it, was to allow the
17 other panel members to hear everyone else's presentation,
18 check to make sure it was within the allotted time frames,
19 to allow me to hear my colleagues speak, to make
20 suggestions as to continuity and that sort of scientific
21 critique of our peers.

22 There would have been people like Mr. Scudder
23 involved to look at it from more of a layman's
24 perspective, to hear the science, but to say that sounded
25 wonderful but I didn't understand what you said. Is there
26 a way that you can say that that's more clear? And that's
27 a valuable role that this type of person would have in
28 this regard.

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1 There would also have been opportunities for
2 him to question, to allow us to foresee the possibility of
3 a media interview. You know, if a reporter asks you this
4 question, what are you going to say? That sort of thing.

5 So it would be more of a -- at that end of
6 the discussion or that end of the program would be more of
7 how would you respond to a media questioning about your
8 presentation?

9 And it was very helpful, because as this
10 answer dictates, sometimes scientists can be a bit
11 long-winded, and we don't necessarily think in the same
12 progression that reporters like to hear things. So it's

13 very helpful to get different perspectives on how you're
14 being -- how your information is being received by people
15 who may not be scientists.

16 Q Was this session videotaped?

17 A I remember portions of the exercise being
18 videotaped, but I would not say that the entire session
19 was videotaped.

20 Q By that, I mean that you made a presentation
21 that was videotaped and then watch it, critique it, see
22 what you did well, see what you did not do well.

23 Was there any part of that in the exercise?

24 A I remember being videotaped, and I remember a
25 critique offered as a result of that, yes.

26 Q From that session, did you receive any
27 written materials?

28 A Substantive material? I'm not sure of your
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1 question.

2 Q Substantive materials about how to be a good
3 witness, consistent with what the whole program was.

4 A Well, I wouldn't say the purpose of the
5 program was to -- was how to be a good witness, the
6 phraseology that you used.

7 It was more along the lines of how to be an
8 effective presenter of scientific information to
9 nonscientists, how to answer questions that might be posed
10 to you by nonscientists, such as media persons, reporters,
11 and whatnot.

12 I remember receiving a packet of
13 information -- well, actually, it's a little box that
14 Mr. Scudder had prepared that was actually a presenter's
15 box sort of thing that had an instruction sheet inside
16 that made suggestions on how to prepare the notes that you
17 would speak from in terms of font size and things, you
18 know, bizarre little things like that to make sure that
19 you could read your notes.

20 In general, I don't speak from notes,
21 though. So I didn't find that particularly helpful.

22 That's the only information I recall that was
23 provided. It was sort of a complimentary kit for how to
24 prepare your presentation and your notes and put it in
25 this box and read from it. But, generally, I don't read
26 for presentations. So I didn't think anything of that.

27 Q Was this an effort to prepare testimony for
28 OSHA regarding the subject of ETS?

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1 A The Reynolds response to OSHA was focused on
2 ETS. The larger context was OSHA's proposed indoor air
3 quality rule that included, as a component of that,
4 various restrictions and commentary specific to ETS.

5 Q Who were the other scientists that
6 participated in this first session with Virgil Scudder
7 somewhere between '91 and '94?

8 A I'm not sure -- well, this session that I'm
9 describing is the one that I most vividly remember. I'm
10 not sure whether that would have been the first session.

11 This session with regard to OSHA
12 presentations or preparations would have been conducted
13 more like in '93 as opposed to -- '93 or '94. The other
14 scientists that would have been -- you asked me for names
15 of people that were there?

16 Q Yes. Please.

17 A Okay. Dr. Stephen Sears, Mr. Tom Steichen,

18 Dr. Paul Nelson.
19 Q Millson, or Nelson?
20 A Nelson.
21 Dr. Christopher Coggins. I'm not sure if I
22 gave Mr. Bohanon. Dr. Charles Green. That's all that
23 comes to mind right off.
24 Q All right. Can you give me the dates or
25 approximate date of any of the other training sessions
26 you've had for testifying?
27 A My recollection -- and I apologize for it
28 being as vague as it is. But there may have been and
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1 probably was a similar session that would have been in the
2 early nineties, '91, maybe ninety -- well, probably 1991
3 that would have been similar in scope but more directly
4 related to presentations we were preparing to make to the
5 U.S. EPA Science Advisory Board in the context of their
6 public hearings.
7 Q Was that also with Virgil Scudder?
8 A Yes, I believe so.
9 Q And what was the format of that training?
10 A Very similar to what I just described.
11 Q How long did it last?
12 A It was much shorter in scope because we were
13 limited by the EPA in the amount of time that we could
14 present.
15 So the actual presentations, I believe we
16 were given a ten-minute time or maybe even five minutes
17 was all we had. And they restricted us to one scientist
18 to speak. So we had -- you know, this was much more a
19 time-constrained event because we got to make sure --
20 we've got a lot of information. We provided all that in
21 written commentary to the EPA, but they restricted our
22 ability to present that orally. So we had to really focus
23 that, make sure we got our -- most -- as we viewed it, our
24 most important points presented in a very narrow time
25 frame.
26 So it would have been shorter by comparison
27 because there wasn't the opportunity for half a dozen
28 scientists to speak and that sort of thing.
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1 Q Were you the one that spoke?
2 A No, I was not.
3 Q Okay. And can you give me -- describe the
4 other -- I -- you said there were two to three training
5 sessions.
6 Is there another one?
7 A My recollection is that any or all of those
8 types of sessions would have been in the context of either
9 a presentation to EPA Science Advisory Board or in
10 preparation for our testimony before the OSHA panel.
11 Those are the only ones that I recall.
12 Q Have you had any other training sessions
13 that you had understood were geared toward testifying in a
14 deposition or trial, something related to a lawsuit?
15 A Nothing that I would characterize as a
16 training session, no.
17 Q Well, what sorts of -- I don't want to get
18 stuck on the phrase.
19 But what sorts of instructional sessions or
20 other educational or informative or training sessions have
21 you had through R.J. Reynolds with respect to the subject
22 of testifying in a lawsuit?

23 MR. KODSI: I'm going to object at that point
24 and just instruct the witness not to reveal any
25 information that might violate the attorney-client
26 privilege.
27 But to the extent you can answer that
28 question without revealing any attorney-client privileged
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1 information, you can answer.
2 THE WITNESS: I'm not sure of the difference.
3 Prior to my first deposition and prior to my
4 first court appearance, there were -- I mean, there was no
5 training session, as you've characterized it. There would
6 have been discussions between myself and Reynolds'
7 attorneys as to what to expect, what's the format, what's
8 the -- you know, what role do I play, what role do the
9 other attorneys play. Basically, to educate me as to the
10 process because I'm not a lawyer. I'm not schooled in the
11 legal system. I'm a scientist, and this is a foreign
12 environment to me. So I expected and greatfully received
13 some information as to what to expect.
14 Beyond that, I mean, I certainly would not
15 characterize that as a training session. You know, all
16 these documents that we've talked about earlier,
17 preparing, and the effort going in to preparing those, you
18 know, what's responsive to a particular request and what's
19 not and what's overly verbose and what's not, those kinds
20 of issues would have come up from time to time throughout
21 this process.
22 BY MR. HULBURT:
23 Q I appreciate that answer.
24 Have you had any other sessions that I'm
25 trying to call training sessions, which I'm trying to use
26 as a broad term, that might include some educational input
27 that you're receiving with respect to the subject of how
28 to testify?
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1 I'm trying to be sensitive to Mr. Kodsi's
2 concern also. I'm not really asking you at all about
3 talking with R.J. Reynolds' lawyers about any
4 particular -- the substance of any particular deposition.
5 I'm not interested in that, and that is attorney-client.
6 I'm really just interested in the subject of
7 how to testify.
8 A As I hear your question, what I would have to
9 say, it may be elaboration or even corrective from what I
10 just said.
11 I would not say I have had any training
12 session, per se, on how to testify.
13 There would have been discussions on what to
14 expect in the legal forum that would have gone on as part
15 of preparing my own expert responses to various issues to
16 be a witness. But I would not characterize that as a
17 training session, and I would say I've never had a
18 training session on how to be a witness in the legal
19 forum. Simply, to be an effective presenter in a more
20 technical or public relations type forum, that would be
21 the OSHA or EPA type hearings.
22 Q All right. I want to go back to the subject
23 we were talking about.
24 What did you do to prepare yourself as an
25 expert witness for this deposition? I think we covered
26 the publication review well.
27 You listed several other sorts of documents

28 that you reviewed, and I want to make sure I capture all
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1 of that.
2 I know already from you that you reviewed or
3 re-reviewed the R.J. Reynolds responses to the OSHA effort
4 and to the Cal EPA effort; is that right?
5 A That's right.
6 Q Okay. And you've reviewed some press
7 releases you said?
8 A Uh-huh.
9 Q What press releases?
10 A There is a stack of those that my
11 understanding of them is that these would have been
12 presented to plaintiffs' counsel in this case. These are
13 things, public statements that R.J. Reynolds would have
14 made that would be broadly applicable to ETS. There would
15 have been some statements made by Reynolds' scientists and
16 P.R. spokespersons either in a congressional hearing or a
17 press release. There were several of those that I
18 specifically recall, relating to product development
19 efforts. You know, introduction of new products into the
20 market, that sort of thing.
21 Ads that would have been published that might
22 have had information about ETS in them or other press
23 releases that would have had ETS information. And there
24 was a fair stack of those, as I recall.
25 Q How thick is this stack of things that were
26 put in the category of press releases, which I want to use
27 to describe all of the things you've just described.
28 A I wouldn't necessarily call them press
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1 releases. This would be what I would characterize as
2 company statements that would not be otherwise classified
3 as research manuscripts or publications or in the
4 scientific literature.
5 These would be statements and positions and
6 possibly the summary of scientific data in more of a
7 layperson type media, newspaper, magazine, or put out on
8 an associated press type of release.
9 Q How thick was this stack?
10 A I remember a stack -- see, this is -- there
11 was some debate that I remember being involved in as to
12 what was exactly responsive in this case. How far back in
13 time did he -- were we being requested to provide
14 information. And I have different dates floating around
15 in my mind.
16 The largest stack I remember went back to
17 1994, and I would -- recollection is it was maybe as large
18 as the stack you have in front of you. Maybe not quite
19 that large. So three, four, five inches stack of material.
20 Q And do you have those records here?
21 A I do not. My understanding is that those
22 were documents that had been delivered to plaintiffs'
23 counsel in this case.
24 Q When?
25 A I have no idea.
26 MR. MILES: I can answer that, Counsel. They
27 were given to your office yesterday morning, the materials
28 he looked at, and are the materials you have and probably
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1 what's sitting on the table in front of you.
2 MR. HULBURT: So whatever documents are in
3 the three- or four-inch or five-inch stack of press

4 releases/company statements, other than scientific
5 literature, were produced to us yesterday morning?

6 MR. MILES: The materials that he looked
7 at -- and I don't know that the size descriptions are
8 accurate. But the overall stack of materials that he
9 looked at was the material that was provided to your
10 office yesterday morning.

11 So there isn't anything that he's referring
12 to that you haven't been provided.

13 MR. HULBURT: Logistically, was that provided
14 to us by handing it to Mickey McGuire yesterday at the
15 deposition, or was it delivered to the office?

16 MR. KODSI: I'll answer that one. I brought
17 it in to the deposition yesterday. I know Mickey had a
18 courier come and get it at 9:15 or 9:30 in the morning.
19 It was right at the beginning of the day. So I assumed it
20 arrived at your office how ever long it takes to get from
21 here to your office after, let's say, 9:30 in the morning.

22 MR. MILES: But it was given to Mr. McGuire
23 yesterday morning?

24 MR. KODSI: Yes.

25 MR. MILES: He did give it to you, didn't he?

26 MR. HULBURT: I got some documents, but I
27 don't think I got press releases. I don't think I got ads
28 with information regarding ETS. I got stuff like
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1 responses to the Cal EPA, things like that that got
2 produced.

3 MR. MILES: Okay. There was, included in the
4 materials, some press releases. I'm quite confident they
5 were there because I personally copied them.

6 MR. HULBURT: Okay.

7 MR. MILES: So I know they went over to you.

8 MR. HULBURT: Okay.

9 BY MR. HULBURT:

10 Q You also earlier put into this category of
11 documents that you read other than scientific documents,
12 the website, the R.J. Reynolds website.

13 Did you review the R.J. Reynolds website as
14 part of your preparation for your testimony as an expert
15 witness?

16 A Yes.

17 Q When did you do that?

18 A Well, I was involved in the generation of the
19 content of that website. That would have predated this,
20 if memory serves correctly. But the final version as it
21 appears on the website currently, I would have reviewed
22 very recently because, as you probably know, content of
23 websites can change. I wanted to make sure that it was --
24 you know, I reviewed the current information. I'm not
25 aware that it changed, you know, over when I reviewed it
26 previously. But I reviewed it just in the last few days.

27 Q What was your role in generating the content
28 of the R.J. Reynolds website?

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1 A To make sure that any statements made about
2 the science of ETS were technically accurate. I recall
3 specifically providing some definitions. I recall
4 reviewing the proposed wording to make sure it was
5 technically accurate.

6 Q Did -- this might be a hair that we can't
7 split, but did you write any of the content, or was it
8 submitted to you for sort of your sale of scientific

9 approval?

10 A I never sat down with the intention of trying
11 to pin a page on the website. There were some
12 definitions, as I indicated, that I did commit to writing
13 and send to various people. So in a matter of speaking, I
14 suppose, yes, I wrote part of it. But to the extent that
15 somebody may have changed my language slightly and sent
16 that back and said is this deal accurate and I would have
17 said, yes, then it would have been really their language
18 or their interpretation of what I had written as a
19 scientist.

20 So I participate, but not with the intent of
21 actually generating the content verbatim of the website.
22 That was a -- that was basically a P.R. type function.
23 Generating the content of information to the public is
24 what our public relations department does.

25 Q So if the P.R. department wrote the content,
26 your understanding is that if it had scientific
27 information in it related to ETS, it would go through you
28 to make sure that it was scientifically accurate?

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1 A Me or other scientists. Absolutely correct.
2 Yes, that's true.

3 Q All right. So some scientists at R.J.
4 Reynolds would approve any scientific statements before it
5 gets on the web --

6 A Scientists and engineers, yes.

7 Q That was the thought process?

8 A Yes.

9 Q You also identified that you read additional
10 manuscripts in order to prepare as an expert witness.
11 Maybe I already asked you that. But what does that mean?
12 Manuscripts, what is that referring to?

13 A I use that language -- as I'm recalling our
14 previous conversation, I use that language to delineate
15 responses to various public hearings or the OSHA and EPA
16 responses, for example. Things that were not intended to
17 be published in the scientific literature but that would
18 have been submitted to various agencies as part of their
19 generating a public record comment, period.

20 So these would be responses to OSHA and EPA
21 and Cal EPA and those types of things.

22 Q Other than the OSHA, EPA, and Cal EPA
23 responses, are there others that you can identify for me
24 with some specificity and say I reviewed that as well?
25 I'm trying to capture whatever goes into this thought of
26 manuscripts.

27 A Well, I would -- sorry.

28 MR. KODSI: Object to the extent this is

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1 cumulative.

2 But you may answer.

3 THE WITNESS: I would characterize that one
4 of the two documents that had Gilpin as a co-author is not
5 a scientific publication. That could broadly fit into
6 this manuscript form as well. That was a status report to
7 a funding agency is what it appeared to me to be.

8 Other than what I've already responded to in
9 answer to previous questions, I can't think of anything
10 more specific that I've not included.

11 BY MR. HULBURT:

12 Q All right. And you read Dr. Carchman's
13 deposition?

14 A I did, yes.
15 Q Okay. Have you read anything with respect to
16 Dr. Nazaroff's testimony, either his deposition testimony
17 or his declaration that was filed in this lawsuit?
18 A I have not read his deposition. I don't
19 recall whether I may have seen a declaration -- whatever
20 you said, a declaration of intent or of testimony. I
21 don't know whether I've seen that.
22 Q There's a declaration that he filed that's
23 over a hundred pages, on legal paper, that was filed some
24 time ago with respect to a motion for a preliminary
25 injunction in this lawsuit.
26 A I don't recall seeing anything of that
27 volume, no.
28 Q Have you seen anything that you understand to
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1 be a summary or a description of any of Dr. Nazaroff's
2 testimony? I'm trying to use testimony as all-inclusive.
3 Either deposition testimony or declaration testimony,
4 written.
5 A I'm not sure that this is the intent of your
6 question. But in many of the documents that I've relied
7 upon here, I would presume would also be relied upon by
8 him because they are relevant documents in the field. I
9 don't recall seeing anything that Dr. Nazaroff authored
10 specifically in the context of this litigation. I don't
11 recall anything that fits that description.
12 Q Okay. And you haven't seen anything that
13 summarizes it or describes it? That was the current
14 question. I know you hadn't seen the actual documents,
15 and so now I'm trying to figure out whether you've seen
16 anything that summarizes or describes what Nazaroff has
17 said in this case.
18 A No, I don't believe I have.
19 Q Do you have any information perhaps from
20 conversations with respect to what Dr. Nazaroff has said
21 in this case?
22 A Yes. I had some conversations.
23 Q Tell me about that.
24 MR. KODSI: To the extent that those
25 conversations are with attorneys and fit within the
26 attorney-client privilege, I will instruct Dr. Ogden not
27 to answer.
28 MR. HULBURT: Well, doesn't this directly go
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1 to his role as an expert witness? I mean, the
2 attorney-client privilege really doesn't apply in that
3 situation. If you've given him information about which
4 he's going to testify as an expert witness, you can't
5 claim attorney-client privilege for that.
6 MR. KODSI: As an employee of R.J. Reynolds,
7 though, conversations he has with the attorneys about this
8 or any case are privileged.
9 If you want to ask him what knowledge he has
10 unrelated to conversations with attorneys, he can answer
11 those questions globally.
12 But as far as specific conversations he may
13 have had with lawyers, I don't think that -- I think that
14 does fit within the privilege.
15 BY MR. HULBURT:
16 Q Is it your understanding, Dr. Ogden, that you
17 will be expected to testify in some way in rebuttal to
18 Dr. Nazaroff's testimony in this case, to respond to him,

19 to rebut his testimony?
20 A Well, I wouldn't even limit it to
21 Dr. Nazaroff. But, yes, I would expect my role here to
22 be -- to comment on testimony entered into the record by
23 other experts.
24 Q All right. And so what information do you
25 have now with respect to testimony from Dr. Nazaroff?
26 A The information I have was from a
27 conversation with one of our attorneys.
28 Q Which one?
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1 A Mr. Kodsí.
2 Q When was that?
3 A The most recent was yesterday.
4 Q When was the first time that Mr. Kodsí talked
5 to you about Dr. Nazaroff's testimony?
6 A Some time ago, but I can't -- it would be
7 months ago. I don't recall exactly.
8 Q How many conversations have there been
9 between you and Mr. Kodsí regarding Mr. Nazaroff's
10 testimony in this case?
11 A I don't recall a specific number. I would
12 say the issue may have come up fewer than a half dozen
13 times. Three or four times, maybe. Maybe as many as five
14 or six. But it doesn't strike me as being any more than
15 that.
16 Q And so my question again is what do you know,
17 as you sit here now, regarding the testimony of
18 Dr. Nazaroff in this case?
19 A From conversations with --
20 MR. KODSI: I've got to object.
21 Why don't we go off the record for a second
22 and take about a two-minute break.
23 MR. HULBURT: All right.
24 (Recess.)
25 MR. KODSI: You want to go back on the
26 record?
27 MR. HULBURT: Yeah.
28 MR. KODSI: We're back on the record. We've
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1 entered into a stipulation off the record that I'll try to
2 recite on the record.
3 Chris, you tell me if I said this correctly.
4 I will waive the attorney-client privilege
5 that I have with Dr. Ogden with respect to conversations
6 we have had about the testimony of Dr. William Nazaroff in
7 this case.
8 That waiver only relates to conversations we
9 specifically had about Dr. William Nazaroff in this case
10 and nothing else.
11 And as long as counsel agrees with that
12 stipulation, then I will waive my objection and allow
13 Dr. Ogden to answer questions related to his knowledge of
14 William Nazaroff.
15 MR. HULBURT: I do agree with that.
16 And we then had the thought of if he's
17 prepared now to have any comment about the testimony of
18 any other plaintiffs' witnesses who have already
19 testified, I want to ask him about that now as well.
20 MR. KODSI: That question, you can ask.
21 MR. HULBURT: All right.
22 MR. KODSI: If in going further, you ask what
23 conversations he's had with the attorneys about other

24 witnesses, then I'd have to object.
25 But I think when you ask the question, you'll
26 be comfortable at that point, forward.
27 MR. HULBURT: All right.
28 BY MR. HULBURT:
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1 Q All right. So the question to you,
2 Dr. Ogden, is what do you know now regarding the testimony
3 of Dr. Nazaroff in this case?
4 A I understand that he is relying on some of my
5 exposure assessment work in the area of ETS in formulating
6 his opinions.
7 I understand that he is using some of our
8 publications in that regard.
9 And I understand that he is calculating
10 exposures in terms of cigarette equivalents.
11 Q Do you have any opinions now that you
12 understand to be responses or rebuttal or critique of any
13 of the testimony that Dr. Nazaroff has given in this case?
14 A I understand or it's been represented to me
15 that in his -- some of his chemicals or constituents of
16 ETS or alleged constituents of ETS that he has
17 formulated -- or that he may formulate opinions on
18 exposure, I have opinions as to whether or not those are
19 valid markers of ETS.
20 I understand that he has used some statistics
21 from some of our studies that I would consider extreme
22 statistics and not necessarily typical data.
23 I understand that the studies that he is
24 relying on that we have conducted have not been conducted
25 in the state of California and that there may be or there
26 appear to be reasons why similarly conducted studies done
27 in California might result in lower exposure numbers.
28 That's all I can think of right off the top
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1 of my head that might be responsive to your question.
2 Q Is there anything else about Dr. Nazaroff's
3 testimony in this case that you've been told, any
4 substantive, any specifics, any parts of his testimony,
5 that you're aware of?
6 A Not that I recall.
7 Q Other than Dr. Nazaroff, are you aware of the
8 testimony of any other of the plaintiffs' witnesses who
9 have testified in this case so far?
10 A I'm aware of a name or two that have been
11 mentioned as potential witnesses or maybe have been
12 deposed or will be deposed, but I have no -- obviously,
13 for ones that have not been deposed, I have no knowledge
14 of what they might say.
15 For any that have been deposed, I have no
16 recollection of any substantive issues.
17 Q What are the names that you're aware of?
18 A I've heard of Witschi. I've heard of
19 Repace. And I've heard of Bogen. Those are the only
20 names that come to mind.
21 Q Do you know Dr. Witschi?
22 A I know of him. We may have met at one point
23 in time, but I don't know him personally.
24 Q Okay. Do you have any information regarding
25 Dr. Witschi's testimony in this case?
26 A At this point, I do not. I have not reviewed
27 any of his testimony. So I have no comment. I don't know
28 what he said. There may be issues that he's raised that I

1 may have expertise in a particular field, particularly as
2 it regards exposure assessment or composition of ETS. But
3 at this sitting, I do not have any specific comments.

4 Q Have you been told anything specifically
5 regarding Dr. Witschi's testimony?

6 A Not that I can recall.

7 Q Do you know Dr. Repace?

8 A It's Mr. Repace. But I -- and I have -- I
9 know of him. I have seen him and would recognize him, but
10 we've never met formally.

11 Q All right. Do you know Dr. Bogen?

12 A No, I don't.

13 Q Are there any other names that you're aware
14 of from the plaintiffs' side of the case?

15 A No. I can't think of any, as I sit here.

16 Q I want to mark as Exhibit 582, the Notice of
17 Taking Expert Deposition of Michael W. Ogden, Ph.D., which
18 was the notice for this deposition.

19 (Exhibit 582 was marked for identification.)

20 BY MR. HULBURT:

21 Q Is that something you've seen before? There
22 are -- just so you know, there are two notices in this
23 case related to you. This is the other one. We'll call
24 that 583. 583 is called the "Amended Notice of Deposition
25 of Defendant R.J. Reynolds Tobacco Company (Michael W.
26 Ogden.)" 583 is what I refer to as the PMK notice, which
27 lists 14 categories, plus three additional categories, of
28 issues that we want to talk to somebody from R.J. Reynolds

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1 about.

2 (Exhibit 583 was marked for identification.)

3 BY MR. HULBURT:

4 Q I think this is the one that you and I spoke
5 about earlier that you had something that had a list of
6 categories; is that correct?

7 A At first glance, that would appear to be the
8 document that we were referring to.

9 Q Okay. So now I want to go back to 582, which
10 is the notice of your deposition as an expert witness on
11 behalf of R.J. Reynolds and -- I guess it's really R.J.
12 Reynolds and the other tobacco defendants.

13 Have you seen this notice before?

14 A No, I don't believe I have.

15 Q Have you been instructed to gather or
16 accumulate any documents with respect to a notice for your
17 deposition as an expert witness and produce documents that
18 would be in your roles as an expert witness? I'm
19 specifically interested in and referring to page 3 of
20 Exhibit 582.

21 A Could I ask you to either repeat or rephrase
22 the question as to what -- I'm not sure what question is
23 on the table.

24 Q Have you been requested to collect and
25 produce any documents related to your deposition as an
26 expert witness?

27 A To collect and to --

28 Q Produce.

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1 A -- produce. No, I don't believe I have. Let
2 me -- well, the documents -- the documents have been
3 produced. I mean, document citations are in my C.V.
4 They're in this RJR ETS publications list. But I don't

5 recall any instance where I was specifically asked to
6 accumulate documents in accordance with your question
7 beyond those sorts of things.

8 Q What I'm going to try to do now is to make
9 sure that all of the documents responsive to this page 3,
10 Exhibit 1 to Exhibit 582, have been produced.

11 And so I want to go through this with you and
12 ask you have each -- have all of the documents responsive
13 to each of these categories been produced, to the best of
14 your knowledge?

15 A In formulating my expert opinion, or from a
16 company perspective, or is there a difference?

17 Q This is you, as an expert witness. And
18 that's why there are two separate notices. And this is
19 specific to you, as the expert witness.

20 And Category No. 1 was "Any and all reports
21 and writings regarding this action, or any issue in it,
22 any of the parties in this action; environmental tobacco
23 smoke/secondhand smoke or any constituents thereof;
24 claimed health consequences or risks, or the absence of
25 health consequences or risks of environmental tobacco
26 smoke/secondhand smoke or any constituents thereof; or
27 warnings, actual or proposed, regarding tobacco smoke,
28 including environmental tobacco smoke/secondhand smoke."

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1 Have all of those documents been produced
2 with respect to your role as an expert witness in this
3 case?

4 A As far as I know, yes. I'm a little
5 confused, because if I'm understanding your question, my
6 understanding is that my C.V., this list of RJR
7 ETS-related publications, and the list of bibliography of
8 documents relied upon by myself is what you're asking for
9 in response to this case.

10 I do not have any other document in mind
11 right now that I would add to any of those lists, but I
12 would say cumulatively, those documents are what you're
13 asking for, if I'm understanding your question correctly.

14 Q Let's do No. 2, then.

15 No. 2 is "All materials provided to deponent
16 by any Defendant or any representative or any attorney of
17 any Defendant."

18 We've talked about documents that you
19 received, which I understand are not here today. So I
20 don't need to do that again.

21 Other than the documents that we've talked
22 about that you've received which are in the notice, and
23 the Carchman depo, have you produced all documents
24 received from any of the attorneys or any of the parties?

25 A Well, I believe so. I mean, again, I was
26 given a copy of Dr. Carchman's deposition as an example,
27 but I did not produce another copy of that. I presume one
28 exists.

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1 Q Yes.

2 A I can't think of anything that has not been
3 produced that I have.

4 Q Okay. No. 3 is "All writings representing,
5 recording, or referring to any work done by or at the
6 direction of the deponent in connection with this lawsuit,
7 including but not limited to originals and drafts of:
8 Reports, test results, notes, correspondence, data
9 records, photographs, time sheets, diaries, e-mail, logs,

10 and billing records."
11 We talked a little bit about notes and
12 letters and e-mails that you may have had, may not have
13 had, and some that you retained or did not retain. I
14 don't want to do that again.
15 Is there anything else, as you read this
16 No. 3 now, that you would have that would be responsive to
17 that request?
18 A No, not that I can think of.
19 Q Do you keep anything that you would call a
20 log?
21 A No.
22 Q Did you prepare any reports related to this
23 case?
24 A No. Well, I've not prepared anything
25 specifically regarding this case.
26 Q That was my question.
27 A Okay. There are obviously --
28 Q I don't want to do the publications again.
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1 I'm asking if you prepared a report related to
2 specifically this lawsuit.
3 A No.
4 Q No. 4 is "All writings referred to or relied
5 on by the deponent in formulating any expert opinion in
6 this matter or any expert opinions to be given at trial in
7 this action or expected to be given."
8 I understand that Exhibit 581 is intended to
9 be the compilation of that.
10 Is that your understanding?
11 MR. MILES: Counsel --
12 MR. HULBURT: Yes.
13 MR. MILES: -- I don't mean to interject, but
14 you're in the area that I was handling.
15 Is your question intended to suggest that
16 only the exhibit was produced to satisfy this question, or
17 are you saying is this one of the things that was produced
18 in response to this inquiry?
19 MR. HULBURT: All right. I'll ask it again.
20 BY MR. HULBURT:
21 Q Have we already talked about every document
22 that would be responsive to this Item No. 4?
23 MR. MILES: I don't -- let me -- go ahead.
24 You can answer only if you can.
25 THE WITNESS: I believe that we have. I
26 believe that I have. I believe that that's what these
27 documents -- and realize that some of these documents cite
28 to -- you know, to lists found elsewhere.
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1 For example, the bibliography document has an
2 entry that says and all documents listed in my C.V., for
3 example.
4 I believe that is all that I have that is
5 responsive in this case. I certainly would hold out the
6 possibility that in the progression of this litigation,
7 there may be new things that become aware, new
8 publications in the literature, etcetera, that would be
9 responsive.
10 But at this point in time, I believe that
11 these encompass -- these three documents that we have been
12 talking about, encompass my expert opinion or the facts
13 that I have relied upon.
14 BY MR. HULBURT:

15 Q That answer triggered another thought.
16 When we went through the publication and you
17 added -- we were going through your C.V. and you added the
18 Part 2 that's in press that's going to be published in The
19 Analyst, is that a document -- a publication that you will
20 be relying on in any way for any of the opinions in this
21 case?
22 A I cannot think of anything in that document
23 that I will rely on here, no.
24 Q Is there any -- well, I don't want to say
25 work in progress -- which is not yet published which you
26 intend to rely on for any of the opinions you have in this
27 case?
28 MR. KODSI: Objection to the extent that
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1 calls for speculation.
2 But if you can answer, you may.
3 THE WITNESS: For the issues that I am aware
4 of at this point in time and for the area of expertise
5 that I intend to offer opinions on, my answer to your
6 question is no.
7 BY MR. HULBURT:
8 Q Okay. I'm trying to capture the thought
9 because you might be right. Maybe an article comes out
10 where we're in the middle of this thing and we're all
11 going to read it and figure out what it means.
12 And I'm trying to capture the thought that
13 maybe you're better aware of that, that you, certainly
14 better than I, would know what's out there, what's in
15 progress, what's coming, and maybe even when it's coming.
16 So I want to know whether you're aware of
17 ongoing research, perhaps even the results of any ongoing
18 research, that you intend to rely on for any of the
19 opinions in this case.
20 MR. KODSI: Same objection. Asked and
21 answered.
22 But you may answer again.
23 THE WITNESS: Again, I would put the caveat
24 on it, that relates to issues of which I am aware now.
25 My expectation is that I may comment on
26 testimony of other witnesses in this case, and to the
27 extent that would require me to support an opinion that's
28 currently not on the table, then I would think I would do
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1 that.
2 But as I understand the issues right now, I'm
3 not aware of anything that is work in progress that would
4 be responsive to the issues, as I understand them at this
5 point in time.
6 BY MR. HULBURT:
7 Q Okay. Let's look at category 5, then, which
8 requests "All writings to be discussed by the deponent
9 while testifying at trial, or expected to be so discussed,
10 including but not limited to any writings for which the
11 deponent's testimony will, or is expected to, provide the
12 evidentiary foundation, in whole or in part, for admission
13 into evidence of such writing."
14 I didn't write that.
15 A And I'm not sure I understand it. But it's --
16 Q That's a lot of lawyer involved in that one.
17 I think the thrust of it is in the first couple words.
18 It's a catchall thing that says produce everything that
19 you intend to use for any of your testimony in this case.

20 And so let me just ask that catchall
21 question.
22 Have we either discussed or have you produced
23 all of the writings that you intend to rely on for your
24 testimony in this case?
25 A I believe that we have, in the context of
26 things that I am aware of now and that I anticipate now.
27 To the extent anything new arises, there may
28 be something different, but my expectations today, the
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1 reliance documents that meet those expectations I believe
2 are accurately captured in the documents that we've talked
3 about.
4 Q Have you done all the work you think you need
5 to do in order to be prepared to testify as an expert
6 witness in the case, right now?
7 A With the caveat that there may be additional
8 work required to comment on testimony of other witnesses.
9 I think the -- you know, I would reserve the right to,
10 obviously, do additional work in that regard I think.
11 But with the opinions that I've -- that I am
12 expecting to offer at trial, I think I have those -- that
13 work is largely done.
14 Other than possibly reviewing documents
15 before trial or something like that, to refresh my
16 recollection.
17 Q Okay. Other than this, the caveat that you
18 have put out of the possibility of responding to other
19 witnesses' testimony, is there any work that you wanted to
20 do in this case but have not done for whatever reason?
21 Work related to preparing yourself to testify as an expert
22 witness.
23 A No. There's nothing I can think of that I
24 would characterize as work I've wanted to do and haven't
25 had time to do or anything like that, no.
26 MR. HULBURT: All right. Let's go off the
27 record.
28 (Lunch recess.)
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1 San Diego, California; Wednesday, July 12, 2000; 1:42 p.m.
2
3 EXAMINATION (RESUMED)
4 BY MR. HULBURT:
5 Q What is your understanding of the areas that
6 you've been asked to testify about as an expert witness in
7 this case?
8 A My understanding is I'm expected or may be
9 asked to testify about environmental tobacco smoke
10 exposures, chemistry of environmental tobacco smoke,
11 research that Reynolds and possibly other defendants have
12 conducted in the areas of ETS exposure assessment and
13 chemistry, issues related to testimony issued by other
14 witnesses in the case in their fields of expertise.
15 Q You mean if they testify about those same
16 areas?
17 A Sure.
18 Q Uh-huh.
19 A I think broadly speaking, that's what I would
20 say I'm anticipating doing.
21 Q Okay.
22 MR. KODSI: And let me just enter for the
23 record, since we did provide an expert disclosure
24 statement for Dr. Ogden that I think has actually been

25 marked as an exhibit, to the extent that there's anything
26 in there that Dr. Ogden didn't mention, obviously, he will
27 be testifying about that as well.

28 BY MR. HULBURT:
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1 Q All right. That's kind of what I was trying
2 to understand because sometimes the declaration says more
3 than, in real life, the person is really going to say.
4 Sometimes it says less than, in real life, the person is
5 going to say. And so what I'm trying to capture today is
6 what are you really going to say.

7 Is there anything -- well, let me show you --
8 have you go back to -- maybe it was not marked as an
9 exhibit.

10 MR. KODSI: I think it was.

11 MR. HULBURT: I think I've showed it to
12 you. But let me show it to you, and we'll call it 584,
13 which is the expert witness declaration on behalf of the
14 various tobacco defendants we mentioned earlier.
15 (Exhibit 584 was marked for identification.)

16 BY MR. HULBURT:
17 Q Page 11 is where it talks about you. I want
18 you to take a look at this again. Specifically, paragraph
19 12c is where it says "Dr. Ogden will testify regarding,"
20 and it follows.

21 And read that again if you need to.

22 The question is going to be are there any
23 other areas besides that that you understand you're going
24 to be asked to testify about?

25 A Well, no, I don't think there's anything in
26 addition that I would add to this. I think there are a
27 couple of things here that I may not have mentioned in my
28 previous answer that I certainly would intend to testify
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1 about to the extent I was asked questions about them.

2 Q All right. Let's -- I want to spend some
3 more time on this Exhibit 581, which is the Bibliography
4 of Documents Relied Upon By Dr. Michael W. Ogden.

5 There are, by my count, I think, 120 total
6 articles listed there. I don't know if you know that or
7 not. I'll just represent to you there are 120 total
8 articles listed there.

9 I want to know of these articles, I'm
10 presuming that you give different weight to different
11 articles.

12 Is that a true statement?

13 A Many articles, of course, are going to
14 contain data and commentary on a variety of issues. Even
15 within a given article, I would give more weight probably
16 to some areas than others as it relates to my expertise.

17 So for a given purpose, I would weight one
18 document higher than another, and for a different purpose,
19 I may reverse the order.

20 So, sure, on a given issue, documents could
21 be weighted, I suppose, in terms of relevance or accuracy
22 or whatever, but that may change from document to document
23 or from issue to issue.

24 Q Do you give different weight to articles
25 that appear in peer-reviewed journals compared to articles
26 that are not in peer-reviewed journals?

27 A Generally, no.

28 Q Why not? How do you evaluate an article with
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1 respect to the subject of whether it's been
2 peer-reviewed?

3 MR. KODSI: Objection; incomplete
4 hypothetical to the extent that he would weigh articles
5 differently depending on what he's looking for.
6 But I'll allow him to answer.
7 THE WITNESS: Can I ask you to restate or
8 rephrase the question.
9 BY MR. HULBURT:

10 Q Sure.
11 What is the significance to you in reviewing
12 an article as to whether or not it's been peer-reviewed?

13 A Peer review is a philosophical process, if
14 you will, that is intended to ensure that data are and
15 conclusions are scrutinized by people knowledgeable in the
16 field, and there is some degree of assurance that having
17 other scientists review your work is helpful in catching
18 errors, typographical errors, possible overconclusions
19 based on the data, possibly inaccurate or incomplete
20 descriptions of data. So there is some review that may
21 help in that regard. It is by no means a guarantee.
22 By peer-reviewed literature has the advantage
23 of having a formal process by which other scientists
24 review the work, most nonpeer review -- or at least what
25 I'm interpreting your question to ask about nonpeer review
26 literature, most of that has some degree of review in it
27 as well. So there is not necessarily a large or even a
28 measurable degree of a difference in confidence to the
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1 data.
2 Q So is it your understanding, then, that in
3 your day-to-day practice, in your field, in your science,
4 you draw no distinction between an article that is
5 peer-reviewed or not peer-reviewed, based on that factor
6 alone, the factor of whether it's peer-reviewed or not
7 peer-reviewed?

8 A That is a distinction that can be made. That
9 does not in and of itself dictate to me that one data set
10 of one report is of higher equal than another.
11 I, as a scientist, will generally look at the
12 data. I'll look at the methodology that's described.
13 I'll look at the references that are used to support the
14 various contentions or statements, and I decide for myself
15 is this quality stuff? Is this relevant or, you know,
16 put a -- I think you used a weighting or ranking. I don't
17 know that I do that. But I draw my own conclusions about
18 the quality of the science and how good it is.
19 Peer review is potentially useful in that
20 area, but I don't really use it in that way. It's not a
21 gold standard, if you will, that guarantees anything.
22 It's a process by which some papers have gone through and
23 others haven't. In some cases, it can be useful. In some
24 cases, I don't know that it is useful.

25 Q I'm trying to understand from your
26 perspective in the real world, does it mean anything to
27 you as the scientist, when you're going through and doing
28 a literature search, trying to review the accumulation of
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1 literature, something like we have this exhibit that has
2 120 articles in it, when you are trying to become aware of
3 a body of research, does it matter to you whether the
4 article has been peer-reviewed or not peer-reviewed, in
5 the real world, day to day? Does it have any significance

6 to you at all?
7 MR. KODSI: Objection; vague, compound.
8 But you can answer.
9 THE WITNESS: I hesitate to say that it has
10 no significance to me, but it is not of major consequence
11 to me, no.
12 BY MR. HULBURT:
13 Q How would you describe its significance to
14 you in the real world, whether an article has been
15 peer-reviewed or not?
16 A Well, by stating that an article is
17 peer-reviewed, that is an assurance that some group of
18 people, possibly only one or two, maybe three or four of
19 scientists who are supposedly knowledgeable in the field,
20 have scrutinized a piece of work and have gone over it
21 with a fine-tooth comb, if you will.
22 But having published a number of papers and
23 seen the review process and been the reviewer of many
24 other papers and seeing other reviewers' comments, I
25 recognize that there's a broad spectrum of quality of peer
26 review.
27 By nature of the peer-review process, it is
28 largely an anonymous process. So one doesn't know by
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1 looking at a paper in a journal, I don't know who reviewed
2 it. I'm trusting that the editor chose people that were
3 objective and had expertise relevant to the subject
4 matter. I don't know that for a fact.
5 So all I can say about peer review is that it
6 is an assurance that some more eyes have looked at the
7 paper, but it's not a guarantee of quality. So I can say
8 with certainty that that means an additional person or two
9 or three have reviewed this work, but I don't know how
10 thoroughly they reviewed it. I don't know their
11 qualifications to review it. I don't know how objective
12 they were in their review. So I can't give it a stamp of
13 approval based on that because it's not a perfect process.
14 BY MR. HULBURT:
15 Q Do you give any less stamp of approval to the
16 article that's not gone through any of that review?
17 A In general, no. Not because of the lack or
18 the presence of peer review. What you find in some
19 nonpeer-reviewed literature are less than adequate --
20 sometimes you may find less than adequate descriptions of
21 the experimental detail. And there may be other issues
22 that it's a very abbreviated reference list, for example.
23 And there might be some indications that these were things
24 that could have been tidied up with peer review. And with
25 a given paper, it could have been a better publication had
26 some additional reviewers looked at it. But just because
27 it is or isn't, isn't a large issue in my mind.
28 As I said a moment ago, I judge a quality of
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1 a manuscript based on the content, as I see it.
2 Q For what journals have you acted as a peer
3 reviewer?
4 A There are several. I've acted as peer
5 reviewer for a journal called Analytical Chemistry.
6 Environmental Science and Technology. The Journal of
7 Chromatographic Science. The -- the name escapes me.
8 I believe it's called Aerosol Science. I've
9 reviewed for Tobacco Science. There's an international
10 journal that I review for that's called Beitrage Zur

11 Tabaksforschung International.
12 Q She will pick that one up later.
13 A There may be more. That's just a list that
14 comes to mind.
15 Q Are you currently on any panels where you're
16 a peer reviewer for any journals? I don't know if that's
17 the right concept, but where you're on a list or on a
18 panel to be a peer reviewer?
19 A Sure.
20 Q Right now?
21 A Yeah.
22 Q For the journals that you just mentioned?
23 A In fact, yeah. In my briefcase in my room,
24 I've got three manuscripts that have been submitted to me
25 for peer review that I hope to get to on the plane ride
26 home.
27 Q Okay. Give me an estimate of the number of
28 articles for which you've been one of the peer reviewers.
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1 A In my career?
2 Q Yes.
3 A This is an estimate. I would guess somewhere
4 in the neighborhood of two to three dozen.
5 Q All right. And when you perform that task,
6 do you believe it's a worthwhile process?
7 A Yes. Because I put a serious amount of
8 effort into it. I will -- in many cases, I've written
9 reviews longer than the manuscript itself.
10 Q And do you believe that your process of peer
11 reviewing articles benefits the science?
12 A I do.
13 Q Do you have some impression about you because
14 of your years in the profession that most of the peer
15 reviewers are good or most are not good or 90 percent are
16 good or do you have some sense about that in your mind?
17 MR. KODSI: Objection; overbroad.
18 But certainly you can answer it, to the
19 extent you can.
20 THE WITNESS: I never thought about it in
21 terms of percentage. I hope that members of the
22 scientific community that are called upon to perform peer
23 review take it with a fair amount of intensity and
24 responsibility in mind. I have no guarantees of that, of
25 course.
26 My expectation is that the majority of peer
27 reviewers are taking this responsibility seriously and
28 perform at least an adequate job. I know that there are
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1 degrees within that. Some people do more. Some people do
2 less. I see that in other reviews that are written on the
3 same papers that I review. I've seen that in the
4 reviewers' comments that are supplied to me when I publish
5 papers.
6 So you see a range of responses. My
7 expectation is that more than not take the job
8 responsibility and do a good job.
9 BY MR. HULBURT:
10 Q Is it your perception that that's yours at
11 least 90 percent of the time?
12 A I have no way of quantifying that.
13 Q Let's look at Exhibit 581 together, the
14 bibliography.
15 The first article there is -- what is the

16 journal there? Is that published in a journal? What is
17 that?

18 A No. That's a stand-alone booklet. It's not
19 a journal article.

20 Q Okay. So that's not something that's
21 peer-reviewed?

22 A I believe there is a committee that is
23 responsible for updating and publishing that book.
24 Presumably, all the committee would have input into
25 it. But in terms of the peer-review process, as you've
26 characterized it and as I understand it, in terms of
27 journal submissions, no, that would not be
28 peer-reviewed. But it's a government booklet publication
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1 that, you know, was not written by a single person. I
2 assume it was written by a committee. There may be an
3 editor associated with that who I presume has
4 responsibility and could act like a peer reviewer. But I
5 don't know the exact process in which that booklet is
6 reviewed.

7 Q Is that a booklet that's focused on
8 occupational exposures?

9 A In general, yes. The booklet -- the acronym
10 ACGIH is American Conference of Governmental Industrial
11 Hygienists. The industrial hygiene field is generally
12 regarded with workplace types of exposure.

13 Q As opposed to residential?

14 A Correct.

15 Q Is there any relevance with respect to that
16 booklet with respect to residential exposures?

17 MR. KODSI: Objection to the extent it calls
18 for a legal conclusion.
19 BY MR. HULBURT:

20 Q I'm asking the expert witness conclusion.

21 A Yes. The book contains a variety of sections
22 and tables. Many of the sections deal with exposure
23 issues that would be relevant both to workplace and
24 nonworkplace exposures.

25 Certainly, the definitions and the supporting
26 text would be relevant for exposure in general. So I
27 think there is relevance beyond the workplace.

28 Q All right. The next one, the Bohanon paper,
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1 is that a paper that was presented at a conference as
2 opposed to something that is part of a journal
3 publication?

4 A Based on this citation, I would say probably
5 neither of those two. This is published in the
6 proceedings of a conference. It may also and I would say
7 likely that it was presented at that conference as well.
8 That's the way most conference proceedings emanate. It's
9 a presentation, and then generally soon thereafter, a
10 written version of that is published in a book or a
11 journal. So this citation is the proceedings of the
12 conference. It may -- it may have been also presented,
13 but I can't guarantee that.

14 Q Is that a peer-reviewed article?

15 A I don't know. I would have to look at the
16 proceedings and -- one could dig into it and find out
17 whether it was. I don't know whether it is or not at this
18 sitting because of -- you know, I've submitted manuscripts
19 to conference proceedings. Some of those are reviewed by
20 a committee. Some of those are not. I don't know whether

21 this one is or not. I've never been the principal author
22 of anything published in that particular proceeding. So I
23 can't say.

24 Q What's the relevance of this article to
25 residential exposures?

26 A Well, by its title, it only refers to a
27 630,000-square-foot office building. So I assume the
28 thrust of this paper -- and, well, the thrust of this
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1 paper would appear to be the operation and maintenance of
2 air quality handling systems in an office building.

3 The relevance could be very much related to
4 the home environment as well. There may be
5 descriptions -- I can't -- you know, without reviewing the
6 paper, I can't tell you exactly what that paper describes.

7 Q Yeah. I --

8 A I know these authors, and I know some of the
9 work they do and some of the type of the work they do.
10 There could be a variety of engineering solutions and
11 models and other things that could be presented there that
12 could be relevant in venues other than office buildings.

13 Q Let me jump in because I'm specifically not
14 trying to ask you to speculate about it.

15 A Okay.

16 Q So, as you sit here right now, other than
17 reading the title of the paper as we see on this exhibit,
18 do you know anything about what's in that article?
19 Because I don't want you to speculate about it. I can
20 read the title too, and I kind of had my thoughts about
21 what that title means. But if you don't know the
22 substance of the article, then I don't want you to
23 speculate about it.

24 A Well, I presume -- well, as in most of these,
25 I'm presuming that the title reflects the major content of
26 the paper.

27 You asked me was it relevant beyond what's
28 listed in the title, and without reviewing the paper, I
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1 couldn't tell you. I don't know.

2 Q I'm interested in that because this is the
3 bibliography of documents that you've relied on for
4 purposes of this case as an expert witness. From my
5 perspective, this is a case about residential exposures.
6 So one thing I'm going to be interested in
7 for all these articles is what's the relevance from your
8 perspective as the expert witness of this article to
9 residential exposure.

10 A Well --

11 Q So some of them, I'm assuming you're familiar
12 with the article and you'd be able to answer that
13 question. Some of them, maybe you don't have the article
14 at hand. And so I don't want you to speculate about it,
15 but I want to know what your thought about it is.

16 MR. MILES: Counsel, are you stipulating that
17 this case is limited to residential exposures?

18 MR. HULBURT: No. No. But I'm going to
19 continue to ask what's the relevance to residential
20 exposures.

21 THE WITNESS: Without reviewing the
22 manuscript or the paper -- and you've indicated that there
23 is approximately 120 citations here. I haven't reviewed
24 most of these in recent history. Many of these papers, I
25 co-authored. Many of these papers, I probably haven't

26 read for a year or more. I haven't committed all the
27 details to memory, obviously.

28 There -- it's certainly possible that this
Vail, Christians & Associates (619)544-8344 108
1 paper contains information that is relevant to home
2 environments.
3 BY MR. HULBURT:
4 Q All right. But you don't know, as you sit
5 here?
6 A I don't know. I mean, operation and
7 maintenance procedure could -- is likely applicable to
8 HVAC systems which could also be applicable to heat pump
9 systems, furnaces that would be used in homes. I'm sure
10 there is information in there about general information
11 principles about controlling and filtering air and
12 bringing in fresh air. Those would be applicable to any
13 enclosed setting.
14 But as I sit here today, without reviewing
15 that paper, I can't give you any specifics about the home
16 environment.
17 Q Bohanon and Curl, were they both R.J.
18 Reynolds employees in 1994?
19 A Yes, they were.
20 Q The next Bohanon article is something at the
21 7th International Conference on Indoor Air Quality and
22 Climate in Tokyo.
23 Is it your thought that that's a paper that's
24 presented at that conference?
25 A Again, the citation is to a conference
26 proceedings. My expectation is that that was also
27 presented at the conference in an oral fashion.
28 Q Okay. Is that peer-reviewed?
Vail, Christians & Associates (619)544-8344 109
1 A It probably is. I don't know. I don't have
2 anything that I've been the principal investigator of
3 that's published in that particular conference
4 proceedings. I know that there is an editor. In fact, it
5 lists the editors here. There are several -- my
6 expectation is that the editors would have reviewed those
7 papers. There are five names listed.
8 I would presume that that is peer-reviewed by
9 at least those five people.
10 Q You don't really know?
11 A Beyond that, I don't know.
12 Q Okay. And do you have any of the information
13 about this article at hand now so that you can tell me
14 what's the relevance of this article to residential
15 exposure?
16 A I think the answers are largely the same as I
17 gave on the previous publication. These are listed in
18 alphabetical order and not in any list of importance.
19 We're in the b's.
20 This is a paper that, by its title, describes
21 the effective ventilation rate on air quality perception
22 in a relatively large office building. The relationship
23 between ventilation rate and air quality perception is
24 also applicable in homes.
25 Whether or not these authors in this
26 particular paper delve into the possible applications in
27 the home environment, again, I can't tell you without
28 reviewing it. I don't know.
Vail, Christians & Associates (619)544-8344 110
1 Q Okay. The next Bohanon article is from the

2 Proceedings of the ASHRAE Conference.
3 So would your answers be similar to the 1993
4 ASHRAE conference, that that's probably part of a paper or
5 part of the proceedings and you don't know whether it's
6 peer-reviewed?
7 A That's correct. It's ASHRAE conference
8 proceedings in a different year from the one you asked me
9 about two ago -- two entries ago.
10 Q Right.
11 Is that --
12 A Go ahead.
13 Q Were you finished?
14 A Yes.
15 Q Is that an article that you're familiar with
16 the substance of it, as you sit here now, other than the
17 title?
18 A I know that I have read it some point in
19 history. I have not reviewed it recently. It describes
20 by its title the effects on ETS smoke concentrations.
21 Those issues would be relevant to homes as
22 well as offices.
23 Q Right.
24 But are you aware of any of the information
25 in this article, as you sit here now, other than the
26 title? I mean, I can read the title too.
27 A No. I can't recall any specifics about that
28 study. It was published five years ago, and it could
Vail, Christians & Associates (619)544-8344 111
1 likely have been several years since I've seen it.
2 Q Okay. Let's do the next Bohanon article on
3 indoor air quality on the 630,000-square-foot office
4 building in North Carolina. That seems to be similar to
5 the second one, published in the proceedings of a
6 conference.
7 Same questions about that.
8 Is that peer-reviewed? Do you know anything
9 about that article? Do you know if it has any relevance
10 to residential? I know those are three questions, but I'm
11 going to trying to go a little faster.
12 A Well, the first Bohanon citation you asked me
13 about has a similar title to this. So it strikes me as
14 being largely another description of the same study. And
15 my answers would be largely the same as given previously.
16 The title does not indicate anything about home
17 environment, but I'm sure the engineering principles that
18 are described there would be applicable in the home
19 environment.
20 Q Other than the title, is there anything about
21 that article that you can tell me, as you sit here today?
22 A No.
23 Q The next one, Brunnemann, is published in a
24 journal Carcinogenesis.
25 That is a peer-reviewed journal?
26 A I believe so, yes.
27 Q Okay. And are you familiar with that article?
28 A I've read the article. It's eight years old,
Vail, Christians & Associates (619)544-8344 112
1 but I haven't reviewed it any time recently.
2 Q As you sit here now, can you tell me anything
3 about the substance of that article?
4 A I do recall that there were -- that that
5 article contained a description, according to the title,
6 "Analysis of tobacco-specific N-Nitrosamines in indoor

7 air," that it contained what I would call some contrived
8 environments that were -- that, you know, they described
9 the difficulty in measuring nitrosamines. There's a
10 description of some -- what I would call, I guess, unusual
11 or maybe unusually high levels of exposure type of
12 environments where they had to go to find results.
13 But that's my recollection of that paper.
14 Q Okay. Let's do the next one, then.
15 Published in Environmental Science & Technology.
16 Is that a peer-reviewed journal?
17 A Yes, it is.
18 Q All right. And do you know anything about
19 that article other than the title, as you sit here now?
20 A Yes, I do.
21 Q That's one that you're familiar with?
22 A Yes. I'm the co-author on it.
23 Q Okay. I missed your name. All right.
24 Good.
25 The next one, Caldwell, published in, what is
26 that, the Journal of Association --
27 A Of Official Analytical Chemists.
28 Q -- of Official Analytical Chemists.
Vail, Christians & Associates (619)544-8344 113
1 Is that a-peer reviewed journal?
2 A Yes, it is.
3 Q Is that an article that you're familiar with?
4 A Yes, it is.
5 Q Did you have any publication role in that one?
6 A At the time -- this author and his co-authors
7 worked for R.J. Reynolds at this time when this work was
8 done. They reported to me, yes.
9 Q All right. The next one is published in
10 Fundamental and Applied Toxicology.
11 Is that a peer-reviewed journal?
12 A I believe so, but I'm not sure.
13 Q Has it been your personal practice when you
14 do scientific research and you publish an article, that
15 you -- that you personally prefer to get it published in a
16 peer-review journal?
17 A Generally, that's true.
18 Q Why?
19 A Because of water circulation.
20 Q Is it your perception as a researcher, as a
21 author, that an article published in a peer-review journal
22 will bring greater recognition to the author?
23 A You're asking me for my own personal
24 professional experience?
25 Q Right.
26 A No, that's not true, from my professional
27 experience.
28 Q The next counter article is published in
Vail, Christians & Associates (619)544-8344 114
1 Environmental Technology.
2 That's not a peer-reviewed journal, is it?
3 A It is.
4 Q It is?
5 A Uh-huh.
6 Q Is that an article published by RJR employees?
7 A Yes, it is.
8 Q The next one is the American Journal of
9 Epidemiology?
10 A Uh-huh.
11 Q Is that a peer-reviewed?

12 A Yes.
13 Q What's the next one? Coultas.
14 What kind of publication is that?
15 A Well, the title indicated is Combustion
16 Processes and the Quality of the Indoor Environment. I
17 don't have any specific recollection. I am -- well, I
18 hate to speculate. But by the citation, the way it's
19 given, it looks to be probably something equivalent to a
20 conference proceeding.
21 Q You don't know what that is, as you sit here
22 now?
23 A No, I don't.
24 Q How about the next cross article.
25 A Okay. What about it?
26 Q Same questions. Is that peer review? Are
27 you familiar with it? As you sit here now, do you know
28 anything about that article other than the title?
Vail, Christians & Associates (619)544-8344 115
1 A Yes, I do. I know something about that.
2 Q The publication is listed as the Proceedings
3 of the 1990 EPA/A&WMA International Symposium on the
4 Measurement of Toxic and Related Air Pollutants.
5 A For a number of years, this was a conference
6 that was held in the Research Triangle Park area of North
7 Carolina sponsored by the U.S. Environmental Protection
8 Action and the Air and Waste Management Association. It's
9 a fairly large volume. I don't know whether it's
10 peer-reviewed or not. It has editors. Papers prior to
11 their inclusion in the proceedings would be submitted to
12 the editors. They generally are papers that have also
13 been presented orally at the conference.
14 This particular paper describes differences
15 between area monitoring and personal monitoring for
16 determining nicotine as an environmental tobacco smoke
17 component.
18 Q Is that an RJR publication?
19 A There are two authors listed. Crouse, at the
20 time, was an employee of Lorillard Tobacco Company. And
21 Oldaker, at the time, was an employee of R.J. Reynolds.
22 Q All right. The next Davis article is from an
23 International Conference on Indoor Air Quality and Climate
24 in Japan. We've talked about that before.
25 Is that an article that you're familiar with?
26 A I have read it, sure.
27 Q As you sit here now, do you know any of the
28 substance of that article?
Vail, Christians & Associates (619)544-8344 116
1 A Yes.
2 Q The next one published in Excerpta Medica, is
3 that a peer-reviewed journal?
4 A I don't know. It appears to be a book title,
5 Present and Future of Indoor Air Quality. By the number
6 of pages listed, it must be fairly large. And it has a
7 volume number. So I'm not sure what that is.
8 Q You're not sure what that publication is?
9 A Well, no. I'm not sure what the nature of
10 the citation is. I believe it is a book. I don't know
11 whether it's a conference proceedings or if it's some
12 other type of book. I'm not sure.
13 Q Okay. The next one is published in the
14 Proceedings of the 1988 EPA/APCA International Symposium.
15 Is that peer-reviewed?
16 A A similar answer that I gave you earlier on

17 another -- to another question, in that this is -- this
18 is, in essence, the same conference. They change their
19 name. This is EPA/APCA. The previous one was AWMA.
20 That's the same organization. They just renamed
21 themselves. It's a fairly large book.

22 Again, I'm a co-author on this particular
23 paper along with some university researchers. There is an
24 editor, but not being the principal author, I don't recall
25 the submission and review process that might have gone on
26 in that paper.

27 Q Okay. The next article is from a different
28 year. The Proceedings of the 4th International Conference
Vail, Christians & Associates (619)544-8344 117
1 on Indoor Air Quality.

2 The same answers with respect to that as
3 we've talked about on the other indoor air quality
4 conferences?

5 A I have been the principal author on some
6 papers published under the Proceedings of the Indoor Air
7 series. And although I can't speak to this particular
8 year, the ones that I have submitted to, I would consider
9 them peer-reviewed because I know the editors reviewed
10 those, made comments to the authors and -- you know, prior
11 to publication.

12 Q How about the next one, Proceedings of the
13 79th Annual Meeting of the Air Pollution Control
14 Association.

15 Is that -- what kind of -- it says "Paper."
16 Where is that published?

17 A This was a presentation that was made that
18 was also published. I believe that this particular
19 association -- this is what the APCA stood for in the
20 previous answer, Air Pollution Control Association. I
21 don't know whether they put those together as a book, but
22 I believe they did put those together as stand-alone
23 papers that they had available for anyone who wanted to
24 request a copy.

25 Q Is that peer-reviewed?

26 A I don't know.

27 Q The next is the Gilpin article that we talked
28 about earlier today, published in Nicotine & Tobacco
Vail, Christians & Associates (619)544-8344 118
1 Research.

2 And if I remember correctly, you said you
3 didn't know if that was a peer-reviewed journal?

4 A That's correct.

5 Q Okay.

6 A I'm not generally familiar with that journal.

7 Q Okay. Is that an article that you obtained
8 yourself, or an article that the lawyers provided to you?

9 A The copy I have was provided to me by
10 Mr. Kodsi.

11 Q Was it an article that you were aware of
12 before discussing it with Mr. Kodsi?

13 A No.

14 Q The next is published in -- I don't know what
15 "Reg" stands for in this context. Reg Toxicol and
16 Pharmacol.

17 Do you know what journal that is?

18 A It's not one I have great familiarity with.
19 I believe the "Reg" stands for regulatory. So it would be
20 Regulatory Toxicology and Pharmacology. I'm not
21 100-percent sure of that.

22 Q Do you know what year that was published?
23 A Not as I sit here, no.
24 Q Do you know anything about that article? I
25 don't know if it's an article. Do you know anything about
26 that publication, as you sit here now?
27 A I do recall that these authors engaged in a
28 description and discussion of the differences between
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1 mainstream smoke and environmental tobacco smoke, and that
2 roughly is the title of the paper. Their conclusions were
3 that there were significant differences between mainstream
4 and ETS. But I can't give you any more than that, as I
5 sit here today.
6 Q And you don't know if that's peer-reviewed?
7 A I don't know.
8 Q The next green article, 1996, a CORESTA
9 Information Bulletin.
10 What does that mean?
11 A That is a -- roughly equivalent to a
12 conference proceedings. In fact, I think this is a
13 conference proceedings that is published by the group
14 whose acronym is CORESTA.
15 Q So an information bulletin is what in that
16 context?
17 A Magazine type of thing. I mean, it's
18 professionally reproduced and bound, but it's a soft
19 back. You know, it's not a hardback book. It's broadly
20 equivalent to a conference proceedings.
21 Q Is that peer-reviewed?
22 A No, it's not.
23 Q The next is Green and others, Letter to the
24 Editor, in Environmental Health Perspectives.
25 A Uh-huh.
26 Q Is Environmental Health Perspectives a
27 peer-reviewed journal?
28 A I believe that it is, yes.
Vail, Christians & Associates (619)544-8344 120
1 Q The Letter to the Editor, that would not be?
2 That's just what it says? That's a letter that those
3 people chose to wrote, commenting on some other
4 publication?
5 A That is what this would be, yes. I have
6 experience with Letters to the Editor. They are reviewed
7 by the editors, and, generally, they are sent to the
8 authors of the article that are being commented upon for
9 comment. So I would say, yes, that is reviewed. Not in
10 the context of an anonymous peer review like we've talked
11 about earlier. But it is reviewed prior to the
12 publication. I mean, a decision is made on Letters to the
13 Editor, just like they are on manuscripts that are
14 published, in that there's a decision to accept for
15 publication or reject or ask for revisions or things of
16 that nature.
17 Q Are you relying on Letters to the Editor as
18 part of the basis of your opinions in this case?
19 A Absolutely.
20 Q Why is that?
21 A Because many Letters to the Editor contain
22 useful information and data.
23 Q The next is a Guerin article, G-u-e-r-i-n.
24 Is that a book?
25 A That's a book, yes.
26 Q And are those R.J. Reynolds employees?

27 A No, they're not.

28 Q Philip -- what is that? Are they Philip Vail, Christians & Associates (619)544-8344 121

1 Morris?

2 A No. Those are scientists at the Oak Ridge National Laboratory in Oak Ridge, Tennessee.

3 Q And the next is proceedings of APCA again.

4 So would that have the same answers with

5 respect to the other APCA articles?

6 A Yes, it would.

7 Q All right. And the next -- what is that

8 journal? Environ- --

9 A Environment International.

10 Q Is that peer-reviewed?

11 A Yes.

12 Q That's one of the articles that you went back

13 and reviewed recently?

14 A Yes.

15 Q Okay. And the next, Hedge article, is what?

16 Is that the Annual Occupational?

17 A That's what I believe that to be, yes.

18 Q Is that peer-reviewed?

19 A I don't know.

20 Q Is that an article that you are familiar

21 with, as you sit here today?

22 A I've not reviewed it in some years, so I

23 don't recall anything specific about that publication.

24 Q The next one is -- you did that before.

25 Environmental -- what is that? Environmental

26 International?

27 A Environment International, yes.

28 Vail, Christians & Associates (619)544-8344 122

1 Q Environment International. All right.

2 You said that is peer-reviewed?

3 A Yes.

4 Q Okay. Is that an article that you're

5 familiar with, as you sit here today, Holcomb?

6 A Yes.

7 Q The next is journal of APCA again.

8 Is that your understanding of a journal

9 publication as opposed to the proceedings of the

10 conference?

11 A That's correct. They do have a journal.

12 This is a journal citation. So this is different from the

13 proceedings that we've talked about earlier.

14 Q Okay. What is the next journal?

15 A Journal of Colloid and Interface Science.

16 Q Is that peer-reviewed?

17 A Yes.

18 Q And the next is a book? That's Jenkins. Is

19 that a book?

20 A Yes, it is.

21 Q And the next is proceedings of APCA again.

22 So would that have the same answers with

23 respect to the other APCA?

24 A With respect to the EPA/APCA conference

25 proceedings, yes, it would have the same answers.

26 Q Do you draw any distinction between relying

27 on articles that are published in peer-reviewed journals

28 and articles that come from these proceedings of the

Vail, Christians & Associates (619)544-8344 123

1 various conferences?

2 A I think you asked me that question earlier.

3 Q Well, I asked you peer-reviewed versus
4 nonpeer-reviewed. I'm now sort of asking a slightly
5 different flavor of peer-reviewed versus things that come
6 out of the conferences.

7 A Globally, based singularly on that
8 distinction, I would say no. A lot of these
9 conferences -- what this particular conference, the
10 EPA/APCA, or as it was renamed, the AWMA Conference,
11 during the period of time through the late eighties and
12 early nineties was one of the premier forums for
13 disseminating and learning about information and research
14 on ETS.

15 So this is -- as an example, is a singularly
16 good example of a conference that was -- that had very
17 useful information. And, in general, these publications
18 and presentations at that conference were very good and
19 very informative.

20 Q There's a -- I don't know if it's Klus,
21 K-l-u-s.

22 Do you see that?

23 A Uh-huh.

24 Q Published in Indoor Environment?

25 A Indoor Environment, right.

26 Q Is that a peer-reviewed journal?

27 A Yes, it is.

28 Q How about the McCarthy article, what is that
Vail, Christians & Associates (619)544-8344 124

1 journal?

2 A American Review of Respiratory Disorders, I
3 believe is that citation.

4 Q What year is that from?

5 A I don't know the exact year. If memory
6 serves, that's the late eighties. But I don't see it
7 here, and I don't recall.

8 Q Is that peer-reviewed?

9 A I don't know.

10 Q Are you familiar with the content of that,
11 other than the title?

12 A I remember reading papers certainly with
13 McCarthy as the first author. Without seeing it, I
14 couldn't say much more about that, no.

15 Q The Muramatsu article at the bottom of the
16 page, what journal is that?

17 A Environmental Research.

18 Q Is that peer-reviewed?

19 A I'm sure that it is, but I can't say for
20 certain.

21 Q On page 5, you see the Nelson article, 1991,
22 published in the Journal of -- what is that? The Journal
23 of the American Society of Mass Spectrometry?

24 A Where are we?

25 Q Second from the bottom, page 5.

26 A Right. Journal of the American Society of
27 Mass Spectrometry. I'm not sure if it's of Mass
28 Spectrometry or Mass Spectromegists. But it's one of
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1 those two.

2 Q Okay. Is that peer-reviewed?

3 A Yes.

4 Q On page 6, there is an article from you,
5 Multiple Measures of Personal ETS Exposure, publications
6 listed as the Proceedings of Indoor Air Volume I.

7 What is that?

8 A There's a typo there. That's not a complete
9 citation. It's Proceedings of Indoor Air, '90 as in --
10 sorry. Indoor '93, as in 1993. That is a conference
11 proceedings published in several volumes.

12 Q Is that the -- is that the same as what we
13 referred to earlier as the International Conference on
14 Indoor Air Quality and Climate? Is that what the
15 conference is?

16 A I believe so, but I'll hedge on that one.
17 I'm not sure.

18 Q Okay. Your article in Analytical
19 Communication, is that a peer-reviewed journal?

20 A Where is that?
21 Yes, it is.

22 Q What is the first Oldaker publication? It
23 says "Indoor Air Quality and Ventilation." What is that?

24 A That's a book. Selper is the publishing
25 company.

26 Q The last Oldaker thing there on page 6, when
27 it says "IAQ 92," that's referring to the Indoor Air
28 Quality Conference, the international conference?
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1 A Well, that's what generally the acronym IAQ
2 stands for. Many of these societies and groups abbreviate
3 their names, and that is the official title. So I don't
4 know whether it's misspelled or if indeed it is IAQ 1992.
5 That is the ASHRAE proceedings, it appears to me.

6 Q On page 8, the first Phillips article, what
7 is that? The International Archives of Occupational
8 Environmental Health?

9 A That's correct.

10 Q Okay. Is that peer-reviewed?

11 A Yes.

12 Q How about the Phillips article toward the
13 middle of the page entitled, "Assessment by Personal
14 Monitoring of Respirable Suspended Particles." It goes
15 on. In Indoor Built Environment.

16 Do you see that one?

17 A Yes, I do.

18 Q What is that, Indoor Built Environment?

19 A That's a very unusual name. But that is the
20 correct name of that journal.

21 Q Is that a peer-reviewed journal?

22 A Again, I'm relatively certain that it is, but
23 I'd have to qualify that. I'm not 100-percent sure.

24 Q The next Phillips article, is that
25 Scandinavian Journal of Work and Environmental Health? Do
26 you see that one?

27 A The next one is Environment International.

28 Q You're right. The next one after that.
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1 A Yes.

2 Q Is that peer-reviewed?

3 A I'm not sure.

4 Q The next one after that, the Pierce, from
5 University of California, San Diego, what kind of
6 publication is that?

7 A I described that one earlier. That is what,
8 if memory serves, appears to have been a status report
9 that would have been -- or that appeared to have been
10 developed by recipients of funding, which, presumably, is
11 the authors, that would have been submitted to the funding
12 agency as a progress report of whatever the funding

13 activity was or contract research was.
14 Q Okay. So you said that earlier.
15 You think that's the one where Gilpin --
16 A That is, yes.
17 Q -- would be the co-author?
18 A Yes, it is.
19 Q Okay. On page 9, the Proctor article on
20 Indoor and Ambient Air Quality, what is that?
21 A That's a book. Although, not listed, the
22 publisher is also Selper in London.
23 Q What is the next R.J. Reynolds Tobacco
24 Company? What kind of publication is that?
25 A That's a book.
26 Q And we've talked about the next ones.
27 What is that one with Ramsey there?
28 A It's a journal.
Vail, Christians & Associates (619)544-8344 128
1 Q From where?
2 A By the title, I would say Germany, but that
3 appears to be a German title, Analytica Chimica. I'm not
4 100-percent sure.
5 Q Is that peer-reviewed?
6 A Again, I'm relatively sure that it is, but
7 I've never published there. So I'm not 100-percent sure.
8 Q How about the -- is it Risner?
9 A Right.
10 Q Risner, '93, Journal of -- what is that?
11 Liquid Chromotography?
12 A That's correct.
13 Q Is that a peer-reviewed?
14 A Yes.
15 Q And the other Risner article is Journal of
16 Chrom- -- what is that, Chromotography Science?
17 A Chromatographic Science.
18 Q Chromatographic Science.
19 A Yes.
20 Q Is that peer-reviewed?
21 A Yes.
22 Q On page 10, the Silver article, Chemical
23 Senses, what is that?
24 A It's a journal.
25 Q Is that a peer review?
26 A I'm pretty sure that it is, but, again, I'm
27 not 100-percent certain.
28 Q Is it possible for you to identify for me in
Vail, Christians & Associates (619)544-8344 129
1 this list the articles or publications that have no
2 funding at all from the tobacco industry?
3 A There are some that I'm sure do not, but
4 there are some that I'm sure that there do. There would
5 be some that I'm not sure of, and I would have to review
6 the documents and check the acknowledgements section and
7 see whether they acknowledge support from Reynolds or
8 someone else. So I could not do that exhaustively. As I
9 said, some are, some aren't. Some, I wouldn't be sure of.
10 Q Well, as we sit here today -- I fully
11 appreciate there will be some you just don't know, without
12 going to check it. But as we sit here now, can we go
13 through and have you tell me the ones that you're certain
14 has tobacco funding and the ones you're certain does not
15 have tobacco funding? And then I'll understand that the
16 rest maybe you don't know and we have to check.
17 A Sure. If you want to do that, we can.

18 Q I do.
19 A May I ask you to clarify what you mean by
20 "tobacco funding" before we start.
21 Q I mean that the researchers or authors are
22 employees of the tobacco company or that the research is
23 funded by the tobacco industry in some way.
24 A Okay. A note to ourselves, this would be
25 easier if this was numbered.
26 The first one, ACGIH, to my knowledge, has no
27 tobacco funding.
28 The next four where Bohanon is the first
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1 author, at least Bohanon, and as I peruse the list, all
2 authors are employees of a tobacco company.
3 The next citation with Brunnemann as the
4 first author is the American Health Foundation. I'm
5 relatively sure that does not have tobacco funding for
6 this particular article.
7 The next one, Caka, I am a co-author, but
8 there are other co-authors who are university professors
9 and graduate students. I don't -- that one may have
10 funding acknowledged to a tobacco company or the tobacco
11 industry. I'm not sure.
12 Caldwell is -- that's an RJR publication.
13 Coggins -- well, all of the authors except
14 Sagartz are R.J. Reynolds employees. So that's a tobacco
15 company paper.
16 Conner and Oldaker, et al., is tobacco.
17 Coultas, I'm sure is not tobacco funded.
18 Both of those.
19 Crouse is.
20 Davis is.
21 When I say "is," I mean either an employee of
22 the tobacco company or would acknowledge funding by the
23 tobacco industry.
24 Is that a sufficiently abbreviated way of
25 doing that?
26 Q Perfect.
27 A DeBethizy is.
28 The next, Eatough may be. I'm not sure.
Vail, Christians & Associates (619)544-8344 131
1 Eudy, E-u-d-y.
2 Gilpin, I would say is because it derives
3 from tax money collected by the company's own sale of
4 cigarettes.
5 Gori, I'm not sure about.
6 Green is. Both Greens are.
7 I should count these so I can get my verb
8 tense correct here.
9 Guerin would acknowledge support from the
10 Center for Indoor Air Research, which has some tobacco
11 industry funding.
12 Heavner is. Heavners are.
13 Hedge, I'm not sure about.
14 Holcomb, I'm not sure about.
15 Ingebretsen is. They are employees of
16 tobacco companies.
17 The next Jenkins citation, in fact, the
18 next -- all of the Jenkins citations probably acknowledge
19 funding, at least partial funding from the industry.
20 Kay is a tobacco scientist.
21 Kendal-Reed is not a tobacco scientist, but
22 the other two authors are.

23 Klus is employed by the tobacco industry.
24 Marbury I'm reasonably sure is not.
25 Martin is.
26 McCarthy I'm reasonably certain is not.
27 Moghissi I know is not.
28 Muramatsu I'm reasonably certain is employed
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1 by or at that time was employed or may have received
2 funding from Japan tobacco.
3 National Research Council I presume is not.
4 The next -- or the rest of that page, page 5,
5 first author Nelson, Dr. Nelson is an employee of R.J.
6 Reynolds.
7 The next, Nystrom, those are Reynolds
8 scientists.
9 The next seven -- well, six citations and
10 citations to my C.V. have Ogden as the first author. I am
11 an employee of the tobacco industry.
12 Oldaker and the rest of page 6 is.
13 Continuing on with Oldaker for all of page 7,
14 those are employees of -- I'm just checking to make sure
15 they all either were or are employees of tobacco companies.
16 All -- well, page 8 with Phillips as the
17 first author, I'm reasonably sure that all of those
18 citations acknowledge support from the Center for Indoor
19 Air Research.
20 Pierce is the same as Gilpin, which is funded
21 by monies collected by the tobacco companies on the sale
22 of cigarettes in California.
23 Pirkle I'm reasonably sure does not
24 acknowledge any funding.
25 Two citations by Proctor. He was, at that
26 time, a tobacco company scientist.
27 Three publications -- or three citations to
28 R.J. Reynolds Tobacco Company. That is self-explanatory.
Vail, Christians & Associates (619)544-8344 133
1 Ramsey may acknowledge support from R.J.
2 Reynolds. I'm not sure.
3 The two letters by Repace, I'm reasonably
4 certain there is not funding by the tobacco industry.
5 The next -- rest of the page 9 and the first
6 five citations on page 10, first author Risner, is tobacco
7 company work.
8 The next two by Rodgman -- during this time,
9 Rodgman -- sorry. Let me restate that. The 1962 paper
10 would have been published by Dr. Rodgman was an employee
11 of R.J. Reynolds.
12 The 1992 publication probably does not have
13 any funding by R.J. Reynolds. But I'm not sure.
14 Silver was funded by the tobacco industry.
15 Tang, first author, that work may be
16 acknowledged as having support from the tobacco industry.
17 Thome is a tobacco industry employee.
18 The next one, Thompson et al., is not a
19 tobacco employee. That may acknowledge citation to
20 funding from the tobacco industry in some way. I'm not
21 sure.
22 Tricker I'm not sure how to characterize.
23 That probably acknowledges funding by a research
24 organization in Germany that is funded partially at least
25 by the tobacco industry.
26 Turner, I'm not sure. In fact, out of all
27 the Turners, I don't know whether -- presumably, they may

28 cite support. I'm not sure.
Vail, Christians & Associates (619)544-8344 134
1 The U.S. Department of Health and Human
2 Services has no support that I'm aware of.
3 U.S. EPA Exposure Factors Handbook, two
4 citations, has no support from the industry that I'm aware
5 of.
6 Three citations, first author Walker, as
7 supported by the industry.
8 The Willers paper, I'm not sure. I have no
9 idea.
10 That's all.
11 Q Are there any scientists in the field that
12 you respect as doing good work on the subject of
13 environmental tobacco smoke that are not employees or
14 financially supported by the tobacco industry?
15 MR. KODSI: I'm going to object to
16 "financially supported" as being vague.
17 But you can answer.
18 THE WITNESS: I'm not sure I understand your
19 question.
20 Could I ask you to go after that again.
21 BY MR. HULBURT:
22 Q Yeah. I'm trying to identify whether there
23 are any scientists that you would acknowledge are doing
24 good work, good science on the subject of environmental
25 tobacco smoke and they are not supported by the tobacco
26 industry.
27 MR. KODSI: Same objection.
28 THE WITNESS: There are many authors who
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1 have -- at one point in time may have received funding
2 from the tobacco industry who may not have received
3 funding for all of their work or other portions of their
4 work.
5 As I understand your question, it's do any
6 scientists who have never received funding? Is that a
7 fair way of -- I'm trying to put bounds on this.
8 BY MR. HULBURT:
9 Q Let me be specific to environmental tobacco
10 smoke.
11 That they've not received funding for their
12 work in environmental tobacco smoke but that you recognize
13 it as good work, good science.
14 A Well, I don't want to give a global
15 endorsement to any scientist, because as I told you
16 earlier, I evaluate every manuscript based on the data
17 that are presented and the conclusions drawn therefrom.
18 So while one author or one group of scientists may author
19 a particular piece of work that I consider quite good,
20 they might also author something that I consider to be of
21 lesser quality.
22 There are some authors who have published in
23 the area of ETS chemistry and exposures that while they --
24 see, the distinction I'm trying to draw and the problem
25 I'm having is that many of these publications are --
26 included authors from a variety of different institutions
27 and including the industry.
28 So while I have published with Dr. Spengler
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1 of Harvard University, he has also published on his own.
2 He certainly has expertise in the area. There is some
3 work that I'm familiar with that I would consider good

4 work.

5 Dr. Hammond, I've also published with her.

6 She has published some things I agree with. She's

7 published some things I disagree with. She has done good

8 work, and there's other work that I find questionable.

9 The group previously headed by Joan Daisey,

10 Dr. Joan Daisey, has published some work that I recall as

11 being very good.

12 I won't -- again, I don't intend that to be a

13 global endorsement. There may be things that any author

14 has published that I find either not supported by the data

15 or that I don't agree with. But there are some areas

16 there that certainly her group has published good

17 information on.

18 Searching my brain for other names. I may be

19 missing some obvious ones. I may not. That's all that

20 come to mind right off.

21 MR. KODSI: Counsel, we've been going about

22 an hour and ten. Whenever -- I don't want to stop you if

23 you're in the middle of a line of questioning, but

24 whenever you reach a good stopping point, if we can take a

25 break.

26 MR. HULBURT: That's fine. We can take a

27 break now.

28 MR. KODSI: Now?

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1 MR. HULBURT: That's fine.

2 (Recess.)

3 BY MR. HULBURT:

4 Q Exhibit 585 is a page off the R.J. Reynolds

5 website. It is the opening page or home page for the

6 subject of tobacco issues on the website.

7 That's something you've seen before?

8 (Exhibit 585 was marked for identification.)

9 BY MR. HULBURT:

10 Q Do you recognize that?

11 A Well, it certainly appears to be a copy of

12 the RJR website page, entitled "Tobacco Issues." I have

13 seen the website and been through the pages. I'm

14 accepting your representation that that is correct. It

15 has a date of 7/11/2000 on it. So I -- it appears that it

16 is.

17 Q Is this a page that you had any role in the

18 content?

19 A I'd have to read it to determine that.

20 MR. KODSI: Counsel, do you have additional

21 copies, or just one for you and the witness?

22 MR. HULBURT: I only have one.

23 MR. MILES: Could you have copies of the

24 other pages that are part of the website? This says it's

25 page 1 of 1, and it's clear that's not the entire

26 website.

27 BY MR. HULBURT:

28 Q It's not intended to be the entire website.

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1 The question is -- what this is is the opening page when

2 you click on "tobacco issues" icon and you get this page.

3 The question right now is did you have any

4 role in the content of this page?

5 MR. MILES: I'm not objecting to your

6 question. I'm just asking whether you have the other

7 pages to attach to this exhibit.

8 MR. HULBURT: I have some other R.J. Reynolds

9 website pages. I don't have all the web pages, but the
10 exhibit is complete.

11 THE WITNESS: I would say I did not
12 contribute to the text that's on this page. In a couple
13 of pages, it refers to positions on secondhand smoke
14 issues and solutions to public issues involving
15 cigarettes. Those do have relevance to ETS in areas that
16 I've studied. Though, I wouldn't say that I had any input
17 in determining the language on this page, it certainly
18 refers to issues that I would have had input into.

19 BY MR. HULBURT:

20 Q Okay. Fair enough.

21 Then as one goes further into the page, you
22 can get to the page that's entitled "Secondhand Smoke,"
23 which I'll mark as Exhibit 586.

24 (Exhibit 586 was marked for identification.)

25 BY MR. HULBURT:

26 Q Do you recognize this as a page off the R.J.
27 Reynolds website?

28 MR. HULBURT: Just a second.

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1 Neil, this is the one page where I have one
2 extra copy.

3 MR. KODSI: Thanks.

4 THE WITNESS: Yes, it appears to be that.
5 It's a page entitled "Secondhand Smoke," the same date,
6 7/11.

7 BY MR. HULBURT:

8 Q Yeah. These were printed off the computer
9 yesterday.

10 Is this a page that you played some role in
11 the content?

12 A I'm hanging up on your choice of words, some
13 role in the content. I would not have sat at my desk and
14 drafted this language, but there's certainly information
15 here where I would have supplied supporting information to
16 help whoever wrote this, to develop.

17 Q Can you tell me what role you played in the
18 text of this page?

19 A I thought I had done that earlier.

20 Q Well, you mean earlier this morning?

21 A Right.

22 Q We talked about the idea that something might
23 be sent to you and you reviewed it for scientific accuracy?

24 A Well, I said that I provided some
25 definitions. I provided a review of textual content to
26 verify its scientific accuracy, make sure it's consistent
27 with the data that we have generated and the other data
28 that can be used to support such contentions or such

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1 notions.

2 Q And I appreciated that. I'm just trying to
3 be as specific as possible now.

4 Looking at the page that deals with
5 secondhand smoke on the R.J. Reynolds website. And I want
6 to be as specific as you can to tell me what part of this
7 you contributed to in any way.

8 A I would say all of this, again, with the
9 caveat that I didn't choose this particular structure of
10 words. But this is all an area that I would have been
11 involved in reviewing and supplying information on.

12 Q The fourth paragraph down on this exhibit
13 says, "We believe, and common sense dictates, that parents

14 and others should avoid exposing infants and young
15 children to high concentrations of airborne irritants,
16 including tobacco smoke."

17 Is that a statement that is consistent with
18 your own opinion? Is that your opinion as well?

19 MR. KODSI: Object to the extent that's
20 outside the expertise of this witness.

21 But you may answer.

22 THE WITNESS: That is not within my area of
23 expertise. I do not have an expert opinion in that area.
24 BY MR. HULBURT:

25 Q Do you have an opinion as the principal
26 scientist at R.J. Reynolds related to the subject of ETS
27 as to whether this is a statement consistent with your
28 opinion, with your beliefs?

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1 MR. KODSI: Let me object just to the extent
2 that mischaracterizes his role at R.J. Reynolds. He is a
3 principal scientist, as he testified, at R.J. Reynolds
4 that studies issues related to ETS.

5 But you may answer.

6 THE WITNESS: I'm not sure I know how to
7 answer that question. I mean, I answered it previously, I
8 thought. This is not an area that is in my particular
9 field of expertise. So I'm not sure how I can answer your
10 question.

11 BY MR. HULBURT:

12 Q When you study ETS, are you attempting to
13 study it so as to know whether ETS has harmful health
14 effects?

15 A When I study it, meaning me as a scientist,
16 no.

17 Q Do you, in your role, participate in any
18 way -- participate might not be a good way. But
19 participate in or collaborate with or share with those
20 scientists that are studying the health effects of ETS at
21 R.J. Reynolds?

22 A I lost your question. Is it do I share --
23 maybe you should ask it again.

24 Q Share, participate, collaborate with those
25 that are focused on the health effects.

26 A Yes.

27 Q So it's not as if you're totally isolated,
28 that you're off doing exposure assessment and other people

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1 are off doing health effects and the two of you never have
2 any dealings with each other? That would not be an
3 accurate description?

4 A That's true. That would not be an accurate
5 description.

6 Q Explain to me the real life relationship,
7 then, between your group or your work and the work that's
8 being done on the health effects related to ETS.

9 A It's difficult for me to capture work that
10 might be responsive to your categorization of the health
11 effects of ETS. There are a variety of scientists in the
12 research and development department and the engineering
13 department of R.J. Reynolds that have expertise in a
14 variety of areas.

15 We collaborate, as these C.V.s and
16 bibliographies demonstrate, on a variety of issues. My
17 particular field of expertise is analytical chemistry and
18 measuring exposures to ETS.

19 I have expertise in other areas in terms of
20 designing and conducting studies to measure exposure. You
21 know, and some other areas as well.

22 But I don't know how to answer your question
23 beyond what's demonstrated in the C.V.s. I mean, we've
24 got people in a variety of disciplines that collaborate on
25 other projects and a variety of different types of studies
26 that are in these various bibliographic citations and
27 C.V.s that are there.

28 So, I mean, I can characterize to you what my
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1 expertise is. Beyond that, I'm a little bit stymied as to
2 what you're asking me to do.

3 Q Do you have an opinion as to whether parents
4 and others should avoid exposing infants to environmental
5 tobacco smoke?

6 MR. KODSI: Objection; vague.
7 Counsel, do you mean expert opinion, or
8 personal opinion?

9 MR. HULBURT: I'm asking expert opinion.
10 BY MR. HULBURT:

11 Q Do you have an expert opinion on that?
12 A I've answered that twice. No, I do not.

13 Q Do you have a personal opinion as a scientist
14 who spent 15 years studying environmental tobacco smoke?
15 A Yes, I do.

16 Q What is that?
17 A My personal opinion is this statement is
18 accurate, and it reflects what I believe, that parents and
19 others should avoid exposing infants and young children to
20 high concentrations of any airborne irritants, including
21 tobacco smoke.

22 Q Why tobacco smoke?
23 A Why tobacco smoke?
24 Q Right.

25 A I'm a bit lost. It says any airborne -- the
26 statement I just read that I agreed to was warning
27 exposure to high concentrations of any airborne irritants,
28 including tobacco smoke.

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1 Now, your question, as I understand it, is
2 why tobacco smoke?

3 Q Right.
4 Why should parents avoid exposing infants and
5 young children to tobacco smoke?

6 MR. KODSI: Objection as
7 mischaracterization. I believe it says "high
8 concentration of airborne irritants, including tobacco
9 smoke."

10 THE WITNESS: Well, the reference to tobacco
11 smoke --

12 MR. MILES: Hang on a second.

13 MR. KODSI: Just to clarify, for the record,
14 we're still offering a personal opinion and not an expert
15 opinion?

16 THE WITNESS: As I've said, my personal
17 opinion is that young children should not be exposed to
18 airborne irritants, including tobacco smoke. Tobacco
19 smoke is the subject of the page. It's the subject of,
20 you know, the tobacco issues, and that's why it's included
21 there.

22 BY MR. HULBURT:
23 Q Right.

24 And we're sort of off the page now, and we're
25 talking about your -- is it your personal opinion -- let
26 me clarify the question.
27 Is it your opinion that parents and others
28 should avoid exposing infants and young children to
Vail, Christians & Associates (619)544-8344 145
1 tobacco smoke?
2 A No.
3 Q So in your opinion, it's got to include some
4 sense of the concentration of the tobacco smoke?
5 A Yes.
6 Q Do you have an opinion with respect to the
7 level of concentration of tobacco smoke that children
8 should not be exposed to?
9 A There is not a number that I can put on that
10 to quantify. I mean, this statement says "high
11 concentrations." And, in my mind, my personal opinion is
12 that's meant to reflect that parents -- again, my personal
13 opinion is that parents should not concentrate their
14 smoking activity in the near vicinity of young children.
15 That does not extend to smoking elsewhere in the house,
16 and there may be trace levels or very small quantities of
17 tobacco smoke because all the indoor air and even outdoor
18 air contains a variety of chemicals from a multitude of
19 sources that one cannot escape from.
20 I mean, it's a part of everyday living.
21 Just as I would say children shouldn't play
22 on the street corner, you know, near the exhaust pipes of
23 vehicles. I mean, you don't concentrate young children in
24 areas of close proximity to sources of chemicals. That's
25 a -- as a parent, I would say that's a bad idea.
26 Q And so, again, let's be specific to tobacco
27 smoke.
28 Why should parents and others avoid smoking
Vail, Christians & Associates (619)544-8344 146
1 near their children?
2 MR. KODSI: Objection; asked and answered.
3 BY MR. HULBURT:
4 Q We didn't get the answer to why yet. I got
5 the response that you believe that's a true statement, but
6 I want to know why.
7 A I'm apparently missing your question. I'm
8 not sure I understand how to answer that question. Maybe
9 I'm missing a point here.
10 Can I ask you to rephrase it, if that's
11 possible?
12 Q Is it because you believe it would be harmful
13 to the child's health?
14 A I believe -- again, my personal opinion, not
15 my expert opinion, I believe that continual exposure of
16 young infants to high concentrations of chemicals from any
17 source, including tobacco smoke, is unwise because there
18 may be health effects or irritation effects or other sorts
19 of things that would not be healthy for a young child.
20 Q Were you involved in this sentence on the web
21 page, the sentence that we've been talking about?
22 A Certainly not in an expert capacity. And I
23 don't recall contributing to it in -- again, not in an
24 expert capacity. But I would have reviewed that sentence,
25 and as we've gone into my personal opinions, that's very
26 compatible with my personal opinions.
27 Q Did you make any suggestions regarding this
28 sentence? Did you participate in editing this sentence

1 from some prior version to what it is here? Did you sign
2 off on this sentence? What role did you have with respect
3 to this sentence?

4 MR. KODSI: Objection; compound, and I think
5 asked and answered as well.

6 THE WITNESS: I don't recall any specific
7 involvement with this sentence, as it stands, one way or
8 the other.

9 I recall reading the page in its entirety.
10 There was not a process by which I signed off on anything,
11 to use your words.

12 Had I had an objection, expert, personal, or
13 professional, I would have raised that. I don't recall
14 doing that in this particular instance. So I have no
15 recollection of raising the issue on this particular point
16 or this particular sentence.

17 BY MR. HULBURT:

18 Q What does high concentration mean in this
19 sentence?

20 A High concentration, to me, in this context,
21 would indicate the concentrations that would be associated
22 with performing the activity for long periods of time in
23 the near vicinity of the child or the infant, as this says.

24 So, for example, I would not -- I would
25 consider an activity that's compatible with this sentence
26 to be smokers smoking in a house would not congregate in
27 the child's bedroom while the child is sleeping and have a
28 poker game. I mean, that would be unwise.

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1 You would do your smoking in other parts of
2 the house if that was compatible with your lifestyle.

3 So the high concentration would be that that
4 resulted from concentrating the activity for long periods
5 of time in the near vicinity of the child. Behavior that
6 would result in high concentrations.

7 Q So am I correct in understanding that from
8 your perspective, then, what should be avoided is people
9 should not smoke near their kids?

10 MR. KODSI: Objection; mischaracterizes prior
11 testimony.

12 THE WITNESS: A large number of smokers and
13 for long periods of time, I would say that's true.

14 BY MR. HULBURT:

15 Q So if one mother is smoking next to her
16 child, that's okay?

17 MR. KODSI: Objection; vague as to what
18 "okay" means.

19 You can answer.

20 THE WITNESS: I don't know how to answer that
21 question.

22 BY MR. HULBURT:

23 Q Does this sentence mean that a mother should
24 not smoke next to her baby?

25 A I don't know how that sentence can be used to
26 say that in the way that you've proposed it. I think what
27 this sentence is meant to portray is that the belief of
28 R.J. Reynolds, which I share, is that parents should not

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1 engage in activities that expose their children to
2 prolonged high concentrations of any chemicals or other
3 irritants.

4 Q Right. Now, I understand that. And I'm

5 trying to -- I'm trying to pursue that further to know
6 what it means to say "prolonged high concentration." So
7 I'm starting simplest.

8 One person smoking a cigarette next to her
9 baby, is that covered by this sentence, or is that outside
10 this sentence and RJR does not believe that should be
11 avoided and does not believe common sense dictates that
12 should be avoided?

13 MR. KODSI: Objection; argumentative,
14 compound, vague.

15 You may answer.

16 THE WITNESS: The question you asked me, as I
17 heard it, is asking what R.J. Reynolds believes.
18 The questions that I'd been answering were
19 what I had a personal opinion for.

20 And, again, I reiterate this is not an area
21 that I study as an expert.

22 The scenario you've created, a mother smoking
23 a single cigarette in the vicinity of her child, there are
24 many variables that are undescribed in that hypothetical,
25 and it would depend on the scenario.

26 And these are many of the issues that go
27 into, you know, dictating what exposure levels would be.
28 So I don't -- I can't answer that hypothetical question
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1 because it assumes -- well, it ignores factors that would
2 be relevant. And I don't know how to answer the question.

3 BY MR. HULBURT:

4 Q Okay. Do you believe that a mother, inside,
5 should not smoke next to her baby?

6 MR. KODSI: Objection; cumulative,
7 argumentative. We've been spending about 20 minutes
8 asking Dr. Ogden about his personal opinions in a
9 deposition where he's here as an expert.

10 Use your time as you will. I just want to
11 note that for the record.

12 THE WITNESS: I can't answer that question.
13 You've asked me a single cigarette, and I've told you
14 there are factors that would be relevant to that that are
15 unspecified here in our example.

16 I can't answer your question as it's asked.
17 I'm sorry.

18 BY MR. HULBURT:

19 Q Is -- well, if that mother that we're talking
20 about is smoking a cigarette next to her baby, in the
21 home, would that be an irritant in high concentration?

22 A It could be.

23 Q Under what setting?

24 A Again, you're asking me in a mode that I'm
25 giving you my personal opinion?

26 Q Well, right now, as I understand it, I'm
27 directly on top of where your expertise is, talking about
28 the concentrations of ETS in given environments.
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1 Is that true?

2 A That is true. But that's not the question
3 that you asked me just a moment ago.

4 Q All right. The question right now is, if a
5 mother is smoking a cigarette next to her baby, inside in
6 their home, would that be an irritant in high
7 concentration?

8 A I can't give you an expert answer to that
9 question, because that's not what I studied.

10 Q You don't study whether it's an irritant?
11 A That's correct.
12 Q Okay. You study whether it's high
13 concentration?
14 A I study what the concentration level is.
15 Q Okay. Can we agree with each other that
16 environmental tobacco smoke is an irritant?
17 A To some people at some concentrations, yes.
18 Q Certainly, that's what's envisioned by this
19 sentence that we've been talking about?
20 MR. KODSI: Objection; speculation.
21 THE WITNESS: My personal opinion would be
22 that that embodies that type of response.
23 BY MR. HULBURT:
24 Q Okay. So let's put that aside.
25 If this mother is smoking a cigarette next to
26 her baby, in the home, is that in high concentration for
27 the baby?
28 MR. KODSI: Objection; incomplete
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1 hypothetical.
2 THE WITNESS: That's what I was trying to get
3 from you earlier, that there are variables and factors
4 that would be relevant to determining what the resulting
5 concentration would be that are unspecified in your
6 example. So it may or it may not.
7 BY MR. HULBURT:
8 Q All right. Under what setting would it be?
9 A Well, there would be scenarios in which the
10 volume of space that the mother and child were occupying
11 for a single cigarette to be smoked, if the larger the
12 volume of space, the lower the concentration would be.
13 The converse of that, of course, is obvious. The smaller
14 the space, the higher the concentration would be, as a
15 single factor.
16 The amount of ventilation or fresh air coming
17 into that space and going out of that space is relevant.
18 If it's a room with a window open and there's a reasonable
19 amount of airflow, that would certainly tend to decrease
20 the concentration. If it was stagnant air, no forced air
21 movement, no fresh air coming in, that would tend to
22 increase the concentration.
23 The proximity of the mother, smoking mother,
24 for this example, to the child would also dictate the
25 concentration. The further away the child was from the
26 smoker, the lower the concentration would tend to be.
27 So, I mean, those -- there are a variety of
28 variabilities there, and, of course, there are a number of
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1 combinations to those variables.
2 Q Well, let's try to put it in some sort of
3 presumably real life situation, that they're in a room.
4 Let's say it's approximately 12 by 12. That they remain
5 in that room together the entire time. That the windows
6 are closed. There's no air-conditioning or forced air
7 even on at the time. You tell me what proximity the
8 mother would need to be to the baby for the baby to be
9 exposed to a high concentration.
10 A There are other variables that you haven't
11 specified here, and one of them is the time frame, the
12 time period in which they occupy the room and the number
13 of cigarettes that are smoked in the room.
14 Q All right. Well, you tell me -- under the

15 setting of the limited bit that I've given you, you tell
16 me the situation where the baby would be exposed to high
17 concentrations.

18 MR. CAFFERTY: Objection; vague and ambiguous
19 as to what you mean by "high concentrations."

20 MR. HULBURT: Well, I agree with that, but we
21 got that term out of this website. So we're using it.

22 THE WITNESS: Well, I would think in the
23 room that you've described, which is 12 by 12, assuming a
24 standard ceiling height --

25 BY MR. HULBURT:

26 Q Yes.

27 A -- and a reasonable amount of air exchange
28 that would be typical of a house, and a smoker smoking a
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1 single cigarette in that room, that would not, in my mind,
2 result in what I would consider a high concentration. It
3 would be measurable by analytical technology that I and
4 others have developed, but I would not consider that high.
5 If 12 smokers were in that room each smoking
6 a single cigarette, yeah, that would be a high
7 concentration. I can't tell you what that number would
8 be. One could devise an experiment and conduct it, and I
9 can measure it. But I can't tell you at this sitting what
10 that hypothetical scenario would result in, but that would
11 clearly be high, in my mind.

12 Q So what are you having in mind when you say
13 "high concentration"? What does that mean to you?

14 A High can be -- is a qualifier that can mean
15 many things. Within the context of a single study, you
16 can talk about the two or three or the top few percent of
17 observations in a study that are, by definition, high.
18 Now, that would be a relative term. You know, they're
19 high relative to situations observed in that study.

20 In an absolute sense, I can't tell you what
21 high is as it relates to a particular health effect or a
22 particular irritation, because that -- there's not been
23 that much work in that area, in the literature. But
24 that's not an area of expertise that I hold out. That's
25 not what I do. I can measure the level and tell you what
26 it is, but it's really for others to tell you in a
27 particular context whether that's high.

28 In the context of a range of measurements and
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1 what's typical in a home, given a particular number for
2 the concentration of an ETS constituent, I can tell you
3 whether or not that's high relative to homes or workplaces.

4 But high in an absolute sense, I cannot give
5 you an answer to that. I don't know.

6 Q Do you know whether it would be harmful to
7 the baby for this mother to be smoking the cigarette in
8 the room, as we've described?

9 MR. KODSI: Objection. I think that's been
10 asked and answered about four times.

11 But you can try again.

12 THE WITNESS: It's beyond my area of
13 expertise. I have no expert opinion as to whether that
14 would be harmful to the baby or not, in your hypothetical.

15 BY MR. HULBURT:

16 Q The next paragraph says, "Despite the
17 conclusion by a variety of public health organizations and
18 government bodies, we do not believe that the scientific
19 evidence concerning secondhand smoke establishes it as a

20 risk factor for lung cancer, heart disease or any other
21 disease in adult nonsmokers."
22 Did you play any role in that sentence?
23 A Yes.
24 Q In what way?
25 A The foundation or the support for the
26 sentence that you read would derive in some respects from
27 work that I have conducted on measuring exposures, looking
28 at exposures that are in the population and people that
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1 live in the United States. It would encompass research
2 that I have done that would be relevant to understanding
3 the epidemiology studies that other people have done. It
4 would be relevant to understanding whether the surrogates
5 for exposure that have been used in other studies are
6 valid or reliable.
7 So there is research that I have conducted
8 that certainly would be used to support this statement
9 that is listed here as Reynolds' position.
10 Q Is this sentence consistent with your opinion
11 as well, as an expert witness in this case?
12 A I'm going to have to read it again to
13 myself --
14 Q Go ahead.
15 A -- to make sure I don't overstep my bounds of
16 what I consider my expertise to be.
17 MR. KODSI: And I'm going to object to the
18 term "consistent" to the extent that's vague and
19 overbroad.
20 THE WITNESS: The particular sentence that
21 we're referring to talks about the evidence that either
22 establishes or does not establish secondhand smoke as a
23 risk factor for disease. As it's stated, that is not an
24 area of expertise that I hold out.
25 What I do is a component of understanding how
26 other people have derived their conclusions.
27 But on its face, that statement is more
28 global than I am prepared to address as an expert.
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1 BY MR. HULBURT:
2 Q You don't have an opinion whether ETS or
3 secondhand smoke is a risk factor for anything --
4 MR. KODSI: Objection --
5 BY MR. HULBURT:
6 Q -- as an expert; is that right?
7 A As an expert, I know from my own studies that
8 a number of assumptions that people have used in the
9 derivation of their risk assessments, I believe they are
10 not accurate.
11 So from my expertise, I would say that there
12 are flaws in certain risk assessments that have been done
13 that other people have used to say that there is a risk
14 factor.
15 I would say based on what I know in my
16 expertise, there is certainly reason to say, wait a
17 minute. I'm not sure that's been done scientifically
18 accurately.
19 So I do have, within my field of expertise,
20 reasons to believe that the supporting data that others
21 have used in risk assessments is not necessarily the
22 correct data or the most accurate data.
23 Q So did you have an opinion as to whether
24 secondhand smoke is a risk factor for anything?

25 A Are you asking me my expert opinion?
26 Q I am.
27 A I cannot give you an answer to that question
28 because that encompasses more than my area of expertise,
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1 and I can't give you a global answer to that question, as
2 an expert opinion.
3 Q Okay. So you're prepared to, in some
4 instances, criticize the technique or conclusions of
5 others who have drawn the connection between secondhand
6 smoke and risk factor for disease, but you have no opinion
7 yourself as to whether there is a connection between
8 secondhand smoke and a risk factor for disease?
9 MR. KODSI: Objection to the extent that
10 mischaracterizes what he said.
11 THE WITNESS: I certainly am in a position
12 and I have done -- in comments, in publications, and
13 citations we've talked about earlier, I have reviewed
14 various aspects of risk assessments. And from my own work
15 have criticized the findings of others based on inaccurate
16 or nonrepresentative or simply the use of manufactured
17 information.
18 In other words, there are certain variables
19 and risk assessments for which we don't have any data.
20 And some agencies and people choose just to make up
21 numbers for input into these various calculations.
22 In my research, myself and others, we have
23 gone out and made certain measurements that I believe
24 should be taken into consideration.
25 So to the extent that a risk assessment done
26 by anybody or any agency is critically dependent on any of
27 the variables that I have studied as an expert and to the
28 extent that our data are correct and their data are
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1 incorrect, to me, that would tend to invalidate the risk
2 assessment, yes.
3 BY MR. HULBURT:
4 Q Do you have an opinion as to whether
5 secondhand smoke is a risk factor for disease in juvenile
6 nonsmokers?
7 MR. KODSI: Objection; outside the scope of
8 his expertise, vague, overbroad.
9 THE WITNESS: The study of risk association
10 and risk assessments is not in my field as an analytical
11 chemist. And that's what I do. So, no, I do not have an
12 expert opinion in that area.
13 BY MR. HULBURT:
14 Q Do you know what the position of R.J.
15 Reynolds is with respect to whether secondhand smoke is a
16 risk factor for juvenile nonsmokers?
17 A Your question -- before I even try to answer
18 it, it is incomplete. You say "a risk factor." That
19 implies a risk factor for something.
20 Q For disease?
21 A For any disease?
22 Q Do you know whether -- do you know what the
23 position of R.J. Reynolds is with respect to whether
24 secondhand smoke is a risk factor for disease in juvenile
25 nonsmokers?
26 A I do not have an expert opinion there, but I
27 do have a personal opinion there that I can offer.
28 Q Well, do you know the position of the company
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1 on that issue?

2 A I believe that I do, yes.

3 Q What is it?

4 A Realizing this is outside my area of

5 expertise, but my representation or my understanding of

6 the company's position is that based on the science that

7 exposure to environmental tobacco smoke has not been

8 established as a risk factor for any disease in any

9 population.

10 Q Do you know why the website here, talking

11 about secondhand smoke, doesn't say that? Why this

12 distinction where this sentence is limited to adult

13 nonsmokers as opposed to all nonsmokers?

14 MR. KODSI: Objection; calls for speculation.

15 BY MR. HULBURT:

16 Q I don't want you to speculate. I'm asking

17 you because of your role being involved in this page.

18 Do you know what went into the thought

19 process behind limiting that to adult nonsmokers rather

20 than all nonsmokers?

21 A No, I don't.

22 Q Did you participate in any meetings,

23 conversations, communication regarding that distinction?

24 A No, I did not.

25 Q Do you have any information as to who drew

26 that distinction?

27 A No, I really don't.

28 Q So if it's not a risk factor for any disease

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1 in any population, why should we avoid exposing infants

2 and children to it?

3 MR. KODSI: Objection; argumentative, outside

4 the scope of his expertise.

5 MR. MILES: Also misstates his testimony, if

6 I can jump in.

7 THE WITNESS: Many things -- and this is back

8 to my personal opinion -- I think come from what you would

9 consider common sense. And as a parent, it does not make

10 good sense to expose children to higher concentrations of

11 anything.

12 And I think this is an acknowledgment of

13 simply a common sensical concept, that it's just not a

14 good idea to do it.

15 BY MR. HULBURT:

16 Q Even though there's no known health

17 consequences?

18 A The question you were asking me earlier was

19 about risk factor, and now we've jumped to health

20 consequences. I'm not sure -- that's beyond my area of

21 expertise, and I'm not sure whether there's a distinction

22 there or not.

23 As a personal opinion, I would say that

24 tobacco smoke exposure, ETS exposure can be annoying. If

25 you consider that a health consequence, then we'd say,

26 yeah, some people are annoyed at some concentration of

27 exposure to ETS. And that can be avoided. I mean, that's

28 an acknowledgment of that concept.

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1 Whether or not you or I consider that a

2 health consequence, I don't know if we're using the same

3 terminology here.

4 Q I would not use that as a health consequence.

5 A Okay.

6 Q Are there -- are you a smoker?
7 A No, I'm not.
8 Q Have you ever been a smoker?
9 A Not a regular smoker. I've smoked a few
10 cigarettes in my life.
11 Q Never around your kids?
12 A I don't think I've ever even smoked one at
13 home, no.
14 Q Is your wife a smoker?
15 A No, she is not.
16 Q Was she ever a smoker?
17 A No.
18 Q How about any of your kids, are they smokers?
19 A No.
20 Q I don't know how old your kids are. So I
21 don't know how relevant that question is.
22 Do you know how long it has been the belief
23 of R.J. Reynolds, this belief that's in paragraph 4 of
24 Exhibit 586, common sense, parents and others should avoid
25 exposing infants and young children?
26 MR. KODSI: Objection to the extent it calls
27 for speculation.
28 THE WITNESS: I don't know how long it has
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1 been since Reynolds has -- as a company, has made such a
2 statement. I have been in conversations with other
3 scientists in R.J. Reynolds who have expressed that
4 opinion for more than ten years.
5 BY MR. HULBURT:
6 Q When was -- when was this page of the website
7 first put up for public view? I know we could get into
8 maybe it's been changed and maybe something has been
9 tweaked. But I'm really interested in when did it first
10 get up?
11 A I can't answer that. I don't know.
12 Q Can you give me your best estimate? When
13 were you first involved in this page of the website, the
14 secondhand smoke page?
15 A I would say the last year or two, but I can't
16 be sure of that. I simply don't recall.
17 Q Let me show you what I'll mark as
18 Exhibit 587, which is the page from the website entitled
19 "Corporate Responsibility: Marketing."
20 (Exhibit 587 was marked for identification.)
21 BY MR. HULBURT:
22 Q Is that a page you've reviewed as well?
23 A I have read this page, yes.
24 Q The first paragraph of that page talks about
25 some exposure. I want to ask you if you had any role in
26 that paragraph.
27 A Well, the sentence that I'm reading that's
28 related to exposure to secondhand smoke, as I read it, is
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1 simply a rephrasing of the same sentence or the same
2 concept that was included on the other page. So my
3 answers to that would apply here as well.
4 Q You're looking at the sentence that says, "We
5 believe that children should not be exposed to secondhand
6 cigarette smoke or any other airborne irritant"?
7 A That's the sentence I'm referring to, yes.
8 Q Now, here, there's no mention of high
9 concentration.
10 So I want to ask you whether this statement

11 on behalf of R.J. Reynolds, that children should not be
12 exposed to any secondhand smoke?

13 MR. KODSI: Objection; outside the scope of
14 this witness' expertise.

15 THE WITNESS: Anybody that reads this can see
16 that it is not qualified in the same way. My personal
17 opinion is that it is intended to be a restatement of the
18 same concept found over there. A different choice of
19 words. Over there, meaning on the previous page we
20 discussed, on secondhand smoke.

21 My personal opinion is that this statement is
22 not exactly accurate.

23 BY MR. HULBURT:

24 Q It goes too far?

25 A I believe so. I believe this statement on
26 the previous page on secondhand smoke is more correct, but
27 that's my personal opinion. And I'm not speaking on
28 behalf of the company or as an expert on that.

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1 Q Do you know why this sentence says what it
2 says, given whatever your involvement was in the web page?

3 A No. I have no knowledge of that.

4 Q Did you provide any comment regarding this
5 sentence to say that it goes too far or we don't need to
6 say that or it's not entirely accurate?

7 A I recall making no specific comment on that
8 sentence.

9 Q Have you participated -- in the course of
10 your work at R.J. Reynolds, have you participated in any
11 efforts to reduce whatever risks there are associated with
12 secondhand smoke?

13 MR. KODSI: Objection; argumentative, lack of
14 foundation.

15 THE WITNESS: I've participated in efforts to
16 reduce the concentrations of ETS in a variety of
17 environments.

18 BY MR. HULBURT:

19 Q In what way?

20 A Participated in engineering types of studies
21 that look at the effect of ventilation and air management
22 and air filtration.

23 I've participated in development aspects of
24 developing technology, air cleaner technology.

25 I've participated in actual field studies
26 where we have gone into restaurants, particularly, and
27 maybe other environments, to actually improve the
28 engineering solutions that were available to the business

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1 owners.

2 I've participated in the development of
3 products, of cigarette products, tobacco products that
4 have reduced ETS emissions.

5 Those are some examples that come to mind
6 right off.

7 Q Have any of those projects that you've just
8 described been in any way motivated by the desire to
9 produce health effects from secondhand smoke, or the
10 annoyance from secondhand smoke?

11 MR. KODSI: Objection; lack of foundation,
12 incomplete hypothetical, argumentative.

13 MR. CAFFERTY: Vague.

14 THE WITNESS: I can't answer the question any
15 better than I just did. The area input that I had into

16 these studies, many of these studies that I and others
17 have done was for the purpose of reducing the
18 concentrations of ETS. That is my input into it, and that
19 is my responsibility in these types of studies, is to
20 document the reduction, if you will, or document the
21 levels of reduction. So that is my expert role in those
22 types of studies.

23 BY MR. HULBURT:

24 Q Yeah. But why? Why were there these studies
25 ongoing, trying to figure out ways to reduce the
26 concentrations of ETS?

27 MR. KODSI: Objection to the extent it calls
28 for speculation.

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1 You may answer, if you know.

2 THE WITNESS: There are a number of reasons
3 that dictate why we would be involved in some of these
4 types of studies. In terms of product development
5 efforts, the issue of reducing ETS concentrations or
6 secondhand smoke exposure is an area that is important to
7 our customers. So as a consumer product company, we reply
8 to the and respond to the wishes of our customers.

9 There are other individuals and business
10 owners that have asked us for assistance, presumably
11 because it's an area of concern to them and their
12 customers. Like, for example, in a restaurant or a bar,
13 to help them design a space that would accommodate smokers
14 and also reduce the concentrations of ETS to which their
15 nonsmoking patrons would be exposed.

16 We recognize -- I recognize that there is a
17 public awareness of environmental tobacco smoke or
18 secondhand smoke exposures and to respond to people's
19 wishes.

20 I mean, we -- and also to understand our
21 products, we engage in this type of research.

22 BY MR. HULBURT:

23 Q Is any of that motivated by a concern of the
24 potential health effects on the nonsmoker?

25 MR. KODSI: Objection; asked and answered.
26 It's also vague with respect to what the concern is.

27 But you may answer.

28 THE WITNESS: Well, as I indicated in my

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1 previous answer, and as indicated in this website,
2 Reynolds is aware that many people find secondhand smoke
3 annoying. We are aware that there have been risk
4 assessments and public policy proclamations that impact
5 smoking in indoor environments and even outdoor
6 environments. We are aware that these risk assessments
7 have been done. We've investigated or done research that
8 are relevant to some of those risk assessments, my
9 particular expertise being in chemistry and exposure
10 assessments.

11 So there is an awareness -- we certainly have
12 an awareness that there is -- there are allegations that
13 have been made. And, as scientists, we're trying to help
14 understand the strength or weakness of those allegations,
15 whether or not there potentially is or is not health
16 effects.

17 I mean, as a company, that's what we're
18 trying to do, and my role in that is exposure and
19 chemistry and other aspects as I've described them, on the
20 risk assessments and understanding whether or not there is

21 a scientifically verifiable risk.
22 BY MR. HULBURT:
23 Q So is that, yes, that part of the motivation
24 for these studies has been an effort to see if you can
25 reduce the potential health effects to the nonsmoker?
26 MR. KODSI: Objection; mischaracterizes prior
27 testimony, argumentative.
28 THE WITNESS: No. The answer is not "yes."
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1 The answer is as I gave it just a moment ago.
2 MR. HULBURT: Let me show you what I'll mark
3 as Exhibit 588, which is a page from the website regarding
4 tobacco-specific nitrosamines.
5 (Exhibit 588 was marked for identification.)
6 BY MR. HULBURT:
7 Q Is this a page that you had some role in?
8 A I may have read this page just in perusing
9 the website, but I don't recall any involvement in
10 developing this page, no.
11 Q Is it your opinion that tobacco-specific
12 nitrosamines are among the most potent carcinogens in
13 cigarette smoke?
14 MR. KODSI: Objection; outside the scope of
15 this witness's expertise.
16 THE WITNESS: The study of carcinogenicity,
17 again, is not a field of endeavor of an analytical
18 chemist. So my expert opinion on this is I don't know.
19 BY MR. HULBURT:
20 Q Have you studied the -- whether
21 tobacco-specific nitrosamines are constituents of ETS?
22 A We have some ongoing research in that area,
23 yes.
24 Q Have you published -- has R.J. Reynolds
25 published on that subject?
26 A Not in ETS, no. We have published on
27 mainstream smoke and sidestream smoke, but right now, we
28 don't have a methodology that's able to measure
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1 nitrosamines in ETS, and we have no data to publish.
2 Q Nitrosamines are present in sidestream smoke?
3 A Some nitrosamines are present in sidestream
4 smoke, yes.
5 Q In higher, or lower concentration than
6 mainstream smoke, or the same?
7 A Before I can answer your question, I need to
8 make sure that I'm using -- let me tell you how -- I'll
9 answer the question and tell you how I'll answer that.
10 Sidestream smoke and mainstream smoke, as they are studied
11 in the laboratory, are laboratory measurements, and they
12 are constrained by the techniques that are used to measure
13 them.
14 So as you've asked me that question, the
15 answer is that the concentrations in sidestream smoke
16 would be lower than in mainstream smoke.
17 Q In the studies that have been done?
18 A Yes. The concentrations in the smoke
19 streams -- and concentration, of course, in this area is
20 within my expertise in terms of micrograms per cubic meter
21 or some other measure of concentration of an analyte in a
22 given air volume. Then my answer is that the
23 concentrations in sidestream smoke would be less than that
24 in mainstream smoke.
25 Q Do you have any data with respect to

26 cigarette equivalents for nitrosamines in sidestream
27 smoke?
28 MR. KODSI: Objection; vague, overbroad.
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1 THE WITNESS: Is your question do I have any
2 information that Reynolds has developed or --
3 BY MR. HULBURT:
4 Q No. That you know of as an expert in this
5 area that you -- that you think is real science, valid
6 data, that tells us something about nitrosamines in the
7 terminology of cigarette equivalents in sidestream smoke.
8 MR. KODSI: Same objection.
9 THE WITNESS: I'm not aware of anyone who has
10 attempted to put concentrations of nitrosamines in
11 sidestream smoke into perspective by using cigarette
12 equivalents.
13 BY MR. HULBURT:
14 Q How about nitrosamines in ETS?
15 A I am aware of some efforts by some people to
16 try to derive cigarette equivalents exposure numbers for
17 ETS that are based on nitrosamines.
18 Q Has R.J. Reynolds done any of that work?
19 A No, not to my knowledge.
20 Q Why not?
21 A Because what is required for an accurate
22 cigarette equivalent calculation, the data input that are
23 required to make that calculation, they do not exist for
24 nitrosamines.
25 Q Is that something that R.J. Reynolds could
26 develop the data if it chose to?
27 A We're trying to, now.
28 Q Is that a project that you're involved in
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1 right now?
2 A That is an area of research that we have
3 conducted in my research group.
4 Let me rephrase or maybe recharacterize the
5 answer.
6 We are attempting to measure concentrations
7 of nitrosamines in ETS. Not for the express purpose of
8 expressing them in terms in cigarette equivalents. And
9 that may have been unclear.
10 But we are attempting -- we have some
11 research ongoing that is attempting to make those
12 measurements of concentrations. That has turned out to be
13 an extremely difficult task and one for which we have not
14 been successful to date.
15 Q How long have you been working on that? You
16 being R.J. Reynolds. How long has that sort of work been
17 under way?
18 A For looking for nitrosamines in ETS?
19 Q Yes.
20 A I would say about three years.
21 Q Do you --
22 A Wait a minute. Let me restate that.
23 There were some attempts that we made earlier
24 that would span more than ten years in which we attempted
25 to measure ETS nitrosamines. This would date into the
26 late eighties, and we were not successful at that point in
27 time. And we deemed that the analytical technology did
28 not exist then to warrant pursuit of that.
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1 The reason we -- so there were a number of

2 years between the late eighties and the mid-nineties in
3 which we did not pursue that.

4 But we believed a few years ago that there
5 had been significant advances in analytical technology
6 that might -- that appeared to make it worthwhile to make
7 an attempt again.

8 Q Do you have an opinion as to what are the
9 most hazardous constituents of ETS?

10 MR. KODSI: Objection; outside the scope of
11 this witness' expertise.

12 MR. CAFFERTY: Objection; assumes facts not
13 in evidence.

14 THE WITNESS: I do not have an expert opinion
15 in that area, no.

16 BY MR. HULBURT:

17 Q Have you had any conversations with any of
18 the other scientists at R.J. Reynolds regarding that
19 subject?

20 A I've been involved in numerous conversations
21 with other chemists regarding what is the composition of
22 ETS. In terms of chemicals that are present or not
23 present, that have been measured or that have not been
24 measured.

25 The discussion around the properties of
26 those chemicals in the way that you asked the question,
27 though, generally, that would not be the topic of
28 conversation. It would be related to, you know, what the
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1 chemist is able to determine and not a toxic or a
2 carcinogenic property that would not be in the area of
3 expertise of an analytic chemist to ascertain.

4 Q In the areas -- in the studies that you do,
5 trying to measure the concentrations of ETS, frequently,
6 you use some marker as the substitute or as the indicator
7 of ETS concentration; is that correct?

8 MR. KODSI: Objection; vague and overbroad.

9 THE WITNESS: I'm not sure how to exactly
10 answer that question. Let me try.

11 We have studied the appropriateness of a
12 variety of chemical constituents of ETS for their
13 suitability in being a marker for ETS as a whole.

14 In general, what we do when we try to assess
15 concentrations or exposures of ETS is that we measure
16 multiple chemicals, multiple constituents, and we have
17 used the phraseology multiple markers.

18 So I guess, broadly speaking, the answer to
19 your question is, yes, we've studied markers. We've
20 studied more than one. Generally, that's our preferred
21 approach, to study more than one marker. And a lot of our
22 research has gone in to trying to ascertain which of these
23 potential markers are better than or worse than others.

24 BY MR. HULBURT:

25 Q What makes it better than or worse than?

26 A There are a variety of constituents that
27 would make up the attributes of a good marker. Those are
28 best summarized by the National Research Council, and they
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1 have four attributes of a good marker. And I, as an
2 expert, agreed with those. So there are certain
3 properties that we're looking for.

4 These include things like the ability to
5 measure its reliability in air, even at low smoking
6 rates. That's one of the problems, for example, with the

7 nitrosamines. It absolutely fails that criteria, right
8 off the bat.

9 There are other criteria of a good marker
10 that include the similar emission rates from a variety of
11 tobacco products. We have studied that. We published on
12 that for a variety of markers.

13 There are -- another criteria, for example,
14 is that the markers stay in a constant relationship, as
15 the NRC worded it, to the agent of concern or the class of
16 compounds that are concern. And, of course, as an
17 analytical chemist and even as the NRC wrote that, they
18 had no idea what that might be.

19 So there is a lot of research that we have
20 conducted, trying to determine the relationship between
21 certain markers and other markers and ETS as a whole.

22 So these are the things that have gone in
23 trying to determine -- some of the things, I should say,
24 that have gone in to trying to determine the validity of a
25 particular chemical as a marker for ETS. And we have
26 published widely on that subject.

27 Q Do you agree that in California,
28 approximately 4 million -- strike that.

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1 Do you agree in California, cigarettes smoked
2 in private residences cause a daily ETS exposure to
3 approximately 3 million nonsmoking Californians, including
4 more than 1 million adolescents and children?

5 MR. KODSI: Objection; vague, ambiguous, lack
6 of foundation.

7 THE WITNESS: I have no knowledge of that
8 type of data. I don't know whether that's true or not.
9 BY MR. HULBURT:

10 Q Do you have any data on that -- on that
11 subject?

12 A I'm sorry. On which subject?

13 Q On the subject of the number of nonsmoking
14 people in California who are exposed to cigarette smoke in
15 the home -- the number of children who are exposed to
16 cigarette smoke in the home in California.

17 A There are two papers that we've talked about
18 earlier that had Gilpin as a co-author that have
19 information embedded in them that is relevant to that
20 topic, but I don't believe they provide any of the numbers
21 that would be directly responsive to your question. There
22 would be factors and relevant information there.

23 That would be the only information that I've
24 reviewed that would be even close to being on topic to the
25 question you asked me.

26 Q Do you agree that ETS contains at least 48
27 specific chemical species that are regulated as
28 carcinogens?

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1 MR. KODSI: Objection; lack of foundation,
2 outside the scope of this witness' expertise.

3 THE WITNESS: Whether or not a chemical has
4 been designated as a carcinogen or whatever word you used,
5 that is not something that I memorize or carry around with
6 me.

7 So I have -- while I have knowledge of what
8 chemicals have been measured in ETS and what chemicals we,
9 ourselves, and R.J. Reynolds have made in ETS, I would not
10 be able to align those with any attributes that any other
11 persons may have associated with those chemicals.

12 So in direct response to your question, I
13 would say I can answer about chemicals in ETS, but
14 categorized in the way you did, I would have to say that's
15 beyond my area of expertise.
16 BY MR. HULBURT:
17 Q Let me show you a copy of the Declaration of
18 William Nazaroff, in Support of Plaintiffs' motion for
19 Preliminary Injunction. And I want to ask you to turn to
20 page 25, Table 4.
21 MR. KODSI: If you're about to start a new
22 line of questioning, would now be a good time for a break
23 since we've gone an hour and five?
24 MR. HULBURT: Actually, I'm on the same
25 line. Let me just do this, and then we'll take a break.
26 This directly follows the last answer.
27 THE WITNESS: Okay. What page?
28 BY MR. HULBURT:
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1 Q Page 25.
2 A Okay.
3 Q If you would just look at this table of
4 chemicals, it's got the heading "Chemical constituents of
5 tobacco smoke." And it goes on to page 26 as well.
6 And my first question is going to be do you
7 agree that these are all chemicals -- chemical
8 constituents of tobacco smoke?
9 MR. KODSI: Objection; vague.
10 When you say "tobacco smoke," do you mean
11 mainstream tobacco smoke, sidestream, ETS, or all three?
12 BY MR. HULBURT:
13 Q Well, if it makes a difference, I mean ETS.
14 I don't know if it makes a difference or not.
15 A It does make a difference.
16 Q All right. Do you agree that these are all
17 chemical constituents of ETS?
18 A Let me take a moment to review the list.
19 Q Yeah.
20 A Okay. I've reviewed the names in this
21 table. At this sitting, no, I'm not prepared to
22 acknowledge that all of these chemicals exist in
23 environmental tobacco smoke.
24 Q Are there some that you're of the opinion do
25 not exist in ETS?
26 A There are many for which there are no data.
27 So, as a scientist, I mean, I can -- I can approach this
28 one of two ways. I mean, the way I prefer to approach it
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1 is if it has not been measured, I can't say whether it is
2 there or not. So in the absence of verification of its
3 presence, I don't know the answer to your question or I'd
4 have to say I don't know whether it's there or not.
5 There are some of these constituents that
6 have been measured in ETS. There are some of them that
7 have not been measured in ETS. There are some of them
8 that I'm not sure exist even in mainstream tobacco smoke.
9 Q Let me ask that question, then.
10 Do you agree that all the chemicals listed
11 here in this table are chemical constituents of tobacco
12 smoke, mainstream tobacco smoke?
13 A No, I'm not prepared to agree with that.
14 Q Which ones would you take off the list as not
15 being chemical constituents of tobacco smoke?
16 A Your statement there, I see, is inconsistent

17 with my answer. I'm not prepared to say that some of
18 these are not in mainstream tobacco smoke. I'm just
19 simply not prepared to say that some of them are. My
20 recollection is not clear on some of these chemical names.

21 One of these nitrosamines, for example,
22 taking a slight different example, the triethylamine,
23 which is at the top of the page, if memory serves, that
24 chemical does not exist in mainstream tobacco smoke. It
25 may have 20 or 30 years ago.

26 Some of these constituents are
27 questionable. For example, DDT strikes me as questionable
28 as to whether that's in tobacco smoke or not, today.

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1 There has been in the literature that I'm broadly aware
2 of, although, my expertise I would say does not extend to
3 an exhaustive listing of chemicals in mainstream smoke.
4 Although, I have knowledge of many of them. I am aware of
5 some debate in the scientific literature as to whether or
6 not some of these other chemicals may truly be in tobacco
7 smoke or not because they -- many of these chemicals are
8 found at such low levels that they are potential artifacts
9 and measurement errors that could have gone into that.

10 So at this sitting, I'm not able to tell you
11 affirmatively whether or not all of these chemicals are
12 present. There are some that I recognize are in -- I'm
13 sorry. Are in tobacco smoke. And some that I would
14 question. And some that I'm simply not sure.

15 Q Let me do this, then.

16 Can you tell me which of the chemicals are in
17 ETS?

18 A I will answer your question in the context of
19 ones that I know are in ETS because I am aware that
20 somebody has made a reliable measurement of that chemical.

21 That would include acetaldehyde, aniline,
22 benzene, benzopyrene, 1,3-butadiene, cadmium, I believe,
23 has been measured in ETS. Although, we have not made that
24 measurement. Carbon monoxide, formaldehyde, nicotine,
25 n-nitrosodimethylamine, n-nitrosonornicotine, toluene. So
26 that's the end of my listing, and those are ones that I am
27 confident have been measured in ETS. There are others
28 that I'm not sure of.

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1 Q Are there chemicals on this list that you
2 would be confident in testifying are not constituents of
3 ETS?

4 A The question that you've asked me is a
5 scientific impossibility. You've asked me to prove a
6 negative, and I can't do that.

7 I can tell you that there are many of these
8 chemicals that unequivocally have not been measured in
9 ETS. I will not go so far, because science does not allow
10 me to go so far, as to equate that to the proof that
11 they're not there. But in the absence of confirmation,
12 that's simply all I can say, is that I don't know whether
13 they're there or not, as a scientist, if nobody has
14 measured them.

15 Q Is that your answer with respect to all of
16 the chemicals that you did not identify as being known to
17 be in ETS? Obviously, what I'm trying to do now is
18 short-circuit the list. But you told me the chemicals
19 that you're willing to say are constituents of ETS.

20 Does that mean that the chemicals that you
21 did not identify, you have no scientific data that

22 demonstrates to you that they are constituents of ETS,
23 because nobody has -- because it hasn't been proven?
24 MR. KODSI: Objection; compound,
25 argumentative.
26 THE WITNESS: Well, no, I'm not able to
27 delineate that list quite so cleanly because there are
28 some of these other chemicals -- most of the names, I
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1 recognize. And for me to sit here and to properly
2 categorize the context in which I've read about them or
3 heard about them, I'm not able to do that. My memory is
4 not that perfect.
5 It would require some -- reviewing some of
6 the information in the documents that are in this list for
7 me to refresh my memory on some of these.
8 For example, arsenic, I mean, I know that
9 arsenic has been measured in indoor air. Whether or not
10 that's been attributed to ETS, I don't recall at this
11 sitting whether it is or not. It certainly is not a major
12 constituent.
13 So, I mean, I can't be more precise than
14 that.
15 BY MR. HULBURT:
16 Q Okay. Let me have you turn to page 6 of the
17 declaration and look at Table 1B. And I'm interested in
18 whether -- this table says "Estimated" -- strike that.
19 I've gotten too many sentences mixed into one
20 thought.
21 This table says, as entitled, "Estimated
22 average residential exposures to specific Prop 65 chemical
23 species present in ETS for California nonsmokers who live
24 with a smoker."
25 Can you confirm, agree, dispute these average
26 exposure numbers that are listed in the table for these
27 chemicals?
28 MR. KODSI: Objection; vague, overbroad,
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1 compound.
2 THE WITNESS: No, I can't confirm or dispute
3 any of them. The units that are listed are in terms of
4 micrograms per day, and that is not a concentration. So
5 this requires information to calculate this number beyond
6 the concentration. And so there would have to be some
7 other input assumptions. Without knowing what those are,
8 I can't comment about these numbers. I'll leave it at
9 that.
10 MR. KODSI: Counsel, would now be a good time
11 for a break?
12 MR. HULBURT: Sure. If you want. Sure.
13 (Recess.)
14 BY MR. HULBURT:
15 Q Okay. Let me have you look at page 7 of this
16 declaration of Dr. Nazaroff, paragraph 14. He describes
17 what he calls a scenario which he refers to as "Case 1
18 scenario." I just want to ask you to read this paragraph,
19 and then the question is going to be whether you agree
20 with his conclusion.
21 MR. KODSI: As I'm reading the paragraph, I'm
22 going to object to that question as being vague, lacking
23 foundation, and that the entire basis for the conclusion
24 certainly isn't present in that paragraph.
25 But to the extent the doctor can answer your
26 question, he's certainly free to do so.

27 THE WITNESS: Well, I can't answer your
28 question, and I can't -- I can't agree with or disagree
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1 with the statements made here, because -- well, for
2 several reasons.
3 One, the paragraph, as stated and as read,
4 incorporates data from other places apparently in this
5 document. I don't know that for a fact. In which data
6 also include assumptions that are not in those particular
7 tables.
8 So I don't know what all the impact factors
9 are to reach these conclusions. So I'm not in a position
10 to agree with or disagree with this statement.
11 BY MR. HULBURT:
12 Q Okay. That's fair enough. I know and you
13 told me before that you didn't ever read this declaration.
14 So have you ever heard anything about this
15 Case 1 scenario that Dr. Nazaroff developed?
16 MR. KODSI: I'm going to object to just the
17 continued questions about the Nazaroff declaration to the
18 extent it's a hearsay document which the doctor has
19 testified he's not seen prior to today.
20 But you're free to answer any questions that
21 are asked, to the extent you can.
22 THE WITNESS: I've not seen this document,
23 and to my knowledge, I've not heard about this Case 1
24 scenario as it's described on this page.
25 MR. HULBURT: Okay.
26 MR. KODSI: Just to save time, if you're
27 going to continue to ask questions about the document,
28 we'll stipulate that we'll have a hearsay objection when
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1 you refer to the Nazaroff declaration.
2 MR. HULBURT: That's fine. You can object to
3 hearsay if you want.
4 BY MR. HULBURT:
5 Q Let me ask you to turn to page 9, paragraph
6 17.
7 I'll give you a chance to read the paragraph
8 and then ask you a couple questions about it.
9 A I've read paragraph 17.
10 Q Okay. I'm going to pick up at about line 8,
11 where it says, "I conclude that 3 million people" -- do
12 you see that?
13 A I do.
14 Q We've already talked about those numbers,
15 about the 3 million and 1 million. So I don't want to do
16 that again.
17 But that sentence goes on to say, "and this
18 population is exposed daily to at least three (and a
19 certain portion of this population as expressed in Case 1
20 is exposed to as many as seven) of these Prop 65
21 chemicals, where this daily exposure exceeds the no
22 significant risk level established by OEHHA for these
23 Prop 65 chemicals."
24 The chemicals -- that statement is kind of
25 incomplete without knowing what chemicals. The chemicals
26 he's referring to are on the previous page, page 8, in the
27 table.
28 And so my question is do you agree with that,
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1 with the conclusion that he states there?
2 MR. KODSI: Objection; lack of foundation.

3 THE WITNESS: There is no way that I can
4 agree with this, because it assumes many things that I
5 don't have knowledge of. I don't have -- I mean, the way
6 that this example was constructed. So I don't know
7 whether these data support these conclusions or whether
8 the calculations are correct or anything. I don't know
9 what the input assumptions are, without having read this
10 entire document.

11 BY MR. HULBURT:

12 Q Do you know whether there are any
13 constituents of ETS which do exist in concentrations in
14 California at a level that exceeds the no significant risk
15 level of Prop 65?

16 MR. KODSI: Objection; lacks foundation.

17 THE WITNESS: I don't know what the no
18 significant risk levels of Prop 65 are. So I have no way
19 to answer that question.

20 BY MR. HULBURT:

21 Q All right. So that's not an area that you've
22 addressed in any way?

23 MR. KODSI: Objection; vague, argumentative.

24 THE WITNESS: Well, I won't say it's a
25 question I haven't addressed in any way. Some of these
26 chemicals -- whether or not they're the ones referred to
27 in this paragraph or not, I don't know. But some of the
28 chemicals in these tables are ones that we have measured.
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1 I'm aware of measurements of some of these
2 others that are in the literature. So, I mean, I'm aware
3 of a portion of this hypothetical, but not in its entirety.
4 I don't know -- I don't know what Prop 65, no
5 significant risk levels are. I have not reviewed that.
6 Presumably, I could, and, you know, it would be in the
7 area of my expertise to see what those are and how they
8 relate to concentrations and exposures that have been
9 measured.

10 But those aren't included in this paragraph.
11 So I can't -- I can't comment as to whether -- you know,
12 as to whether these data are consistent with this
13 conclusion or not.

14 BY MR. HULBURT:

15 Q Do you agree that residential settings
16 strongly dominate overall ETS exposure?

17 MR. KODSI: Objection; overbroad, incomplete
18 hypothetical, vague, argumentative.

19 THE WITNESS: Is that a statement from this
20 document that I -- I'm not -- I'm not sure whether I
21 should take that in the context of this document or as a
22 global statement.

23 BY MR. HULBURT:

24 Q I'm trying to throw it at you as a global
25 statement. It is in the document. It's on page 13 of
26 paragraph 21. I'm just asking you the question whether
27 you agree with that statement.

28 MR. KODSI: Same objections.

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1 THE WITNESS: All right. I've read the
2 paragraph.
3 Can you ask me a question again.

4 BY MR. HULBURT:

5 Q Yes.
6 Do you agree with his sentence that says,
7 "With laws and regulations in California now severely

8 restricting smoking in public buildings, residential
9 settings strongly dominate overall ETS exposure,
10 accounting for approximately 60 to 80 percent of the
11 average exposure of nonsmokers"?

12 MR. KODSI: Objection; compound, lacks
13 foundation.

14 THE WITNESS: Well, to begin to address the
15 question that's posed here or the statement that's posed
16 here, I, as an exposure expert, would have to look at
17 scenarios in which exposure could occur.

18 The suggestion in this paragraph is that by
19 eliminating public exposure, residential settings are now
20 the dominant source of overall exposure.

21 To the extent that residential settings
22 included a smoker who smokes in the residence, that
23 would -- I would tend to broadly agree with that. I mean,
24 the residential setting is -- where there is a smoker
25 would be the place or the venue in which a potentially
26 exposed nonsmoker would spend the majority of their time.

27 And while this doesn't suggest by this
28 language that that's -- the magnitude of that exposure.

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1 That just simply says most of the exposure would occur in
2 the home, as I'm paraphrasing it, because smoking is
3 basically not allowed in public places. On its face, that
4 seems to be a reasonable statement, as I understand what
5 he's saying there.

6 BY MR. HULBURT:

7 Q You'll see on the next page at Figure 2 where
8 he's got the little pie charts. He makes a reference to
9 Miller et al., 1998 publication.

10 Are you familiar with that publication at
11 all? There is a bibliography in the back if you need to
12 look at that.

13 A If you can point me to it.

14 Is it at the very end?

15 Q It is.

16 A Do you know what number it is?

17 MR. KODSI: Actually, if you can allow me, I
18 think I can --

19 MR. HULBURT: You both went too far back.

20 MR. KODSI: The C.V. is at the end of this
21 document.

22 MR. HULBURT: It's on page 105.

23 THE WITNESS: I don't know that I'm familiar
24 with this report as it's cited. I'm familiar with the
25 effort. In fact, I had the occasion to communicate with
26 one of these authors who presumably, as I understand it,
27 in the course of doing this work, called me or one of my
28 colleagues and requested some additional information from

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1 us, which we provided.

2 So I'm broadly familiar with that effort, but
3 I don't know that I am with this citation. I'd have to
4 see the exact document to know whether -- to be able to
5 try to answer whether I've seen it or not.

6 BY MR. HULBURT:

7 Q Other than the Gilpin article that was sent
8 to you by Mr. Kodsi, do you have any data with respect to
9 California exposure to ETS --

10 MR. KODSI: Object as argumentative.

11 BY MR. HULBURT:

12 Q -- in the home?

13 A I'm trying to recall what data I might have
14 seen that would have been relevant to exposure in the home
15 in California. I do not have any data from a study that
16 R.J. Reynolds conducted that would be relevant to that.

17 Q Do you have any studies that you're relying
18 on with respect to exposure to ETS in the home in
19 California, other than the Gilpin article that we've
20 already talked about?

21 A That's a very broad question that I can't --
22 I cannot categorically say no to because many of the
23 studies that I rely upon, including ones that we have
24 conducted, including ones that others have conducted that
25 are listed in these various documents, have information
26 that is going to be relevant to exposure in homes in any
27 state, including California.

28 I'm not aware right at this moment that any
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1 of those have California-specific information, but there
2 is certainly data and there is certainly information
3 that's available that would be relevant to exposure in
4 homes in California, yes. Although, it may not be
5 specific to California, it would be relevant to exposures
6 in homes in California.

7 Q Is the Gilpin article the only thing that you
8 have that is specific to California?

9 MR. KODSI: Objection; overbroad.

10 THE WITNESS: In the bibliography that's been
11 provided, there is a citation to a 16-city study that
12 included as one of the cities, a city in California. I do
13 not have any data other than what is published in that
14 paper, but I know that has some California-specific
15 information in it.

16 In one of our studies, although it wasn't
17 directly related to measuring airborne exposures to ETS,
18 it also included a city in California. But I don't
19 believe that paper has -- at my current recollection, I
20 don't believe that paper has any California-specific
21 information in it. And without -- well, at this setting, I'm
22 simply not sure. There is certainly information that is
23 relevant to California.

24 Your question, as I understand it, is, is
25 there any specific California information in it, and none
26 comes to mind right at this moment.

27 BY MR. HULBURT:

28 Q All right. Let me have you turn to page 15
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1 in the Nazaroff declaration, on paragraph 24. It starts
2 talking about smoking in California.

3 And it says -- Figure 3 shows that the
4 current prevalence of smoking among California adults is
5 approximately 18 percent, down from approximately 26
6 percent in the mid 1980s.

7 Do you have any information that is -- can
8 you agree, disagree with those numbers?

9 A I can't agree or disagree with those numbers.

10 Q You don't know one way or the other, as you
11 sit here right now?

12 A No, I don't.

13 Q Do you have any information with respect to
14 the prevalence of smoking among California adults in 1999
15 and/or 2000?

16 A I cannot think of anything. The Gilpin
17 articles would be relevant to -- possibly would be

18 relevant to that, but they were published prior to '99 and
19 could not have data relevant to the current year. So I
20 can't think of anything that I'm aware of that would be
21 responsive to those two years.

22 Q On page 16, paragraph 27, Dr. Nazaroff makes
23 a statement -- it's paragraph 27, line 17. It says,
24 "Thus, the large majority of cigarette smokers in
25 California smoke every day."

26 Do you know -- do you have any information to
27 be able to say whether that is an accurate conclusion?

28 MR. KODSI: Objection; lacks foundation,
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1 vague, overbroad.

2 THE WITNESS: The frequency of smoking is,
3 again, not my area of expertise. So I would not have an
4 expert opinion on that point.

5 BY MR. HULBURT:

6 Q All right. Paragraph 28, below there, at
7 line 21, he says, "the average California smoker consumes
8 almost 17 cigarettes per day, a little less than the 20
9 cigarettes in a pack."

10 Do you have any information to know whether
11 that's an accurate statement?

12 MR. KODSI: Same objections.

13 THE WITNESS: Is your question overall, or is
14 it specifically the 1999 and 2000? I'm just trying to
15 clarify what time frame I'm trying to think through.

16 BY MR. HULBURT:

17 Q I think the time frame is now. You know,
18 probably, the results of science would mean it's in the
19 most recent, two, three, four years, by the time something
20 gets published.

21 A Well, I guess that's my point. If you're
22 asking me about 1999 and 2000, the answer would be no
23 because I'm not aware of any publications that could have
24 been published in that time frame that would be relevant
25 to data in that time frame.

26 Q Okay. So how about before?

27 A Okay. Well, if that was the limitation of
28 your question, then it was pretty easy. If you're asking
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1 me before 1999, then I'd have to sit here and reflect on
2 it a little while.

3 Q I don't want to go too far before. Let's say
4 '97, '98, if that makes a difference in your thought
5 process.

6 A Sure. A few less years that I have to think
7 through.

8 Certainly, I have conducted no studies that
9 would have data related to California smoking patterns in
10 the '97 to date time frame.

11 Q Are you aware of any?

12 A And I'm -- I don't recall any of the
13 information that I've seen right at this point that has
14 that type of information in it. Again, that's not to say
15 it doesn't exist, but I simply can't recall it at this
16 point.

17 Q All right. Let me ask you to turn to page
18 18, paragraph 35. I really want to pick up at line 5
19 where he says, "a behavioral study has shown that the
20 distribution of cigarette smoking throughout the day tends
21 to be regular, suggesting that the proportion of the awake
22 hours spent at home is likely to be a good estimate of the

23 proportion of cigarettes smoked while at home."
24 Do you have any information regarding that
25 conclusion, the idea that a cigarette smoker is going to
26 smoke consistently through the day?
27 A Well, I believe the Gilpin articles do
28 contain information that's relevant to that point.
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1 Q What do you know about that?
2 A Well, the subject of those documents is the
3 smoking restrictions in the home, and the conclusions that
4 I recall were that there was -- were a significant number
5 of Californians who also restricted smoking in their
6 home.
7 So, certainly, for those individuals, the
8 number of hours spent at home would not be reflective of
9 the number of cigarettes smoked at home. So that data is
10 not relevant. I'm not sure --
11 The data in the Gilpin paper are relevant to
12 this point, and what I just answered incorrectly was
13 the -- I mean, the presumed association of the data, as
14 indicated in this paragraph, would not be relevant if a
15 person doesn't smoke at home, which apparently a number of
16 Californians do not do.
17 And depending on the categorization, as given
18 in those papers, there were some significant percentages
19 in certain categories of Californians who did not smoke at
20 home or at least observe some sort of smoking restriction.
21 Q Let's read the next sentence, then.
22 It says, "Third, a 1992-93 telephone survey
23 revealed that 72 percent of California households in which
24 a smoker resides permits smoking in some or all areas of
25 the home."
26 And he cites MMWR, 1997.
27 Do you know whether that's an accurate
28 conclusion?
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1 A No --
2 Q And I want to talk about now, whether that's
3 an accurate conclusion for describing California now, in
4 '99 and 2000.
5 A Well, I would say based on the Gilpin
6 articles which were published more recently, that there's
7 indication that this would not be accurate for current day
8 California.
9 As to the accuracy of this statement as it's
10 attributed to this citation, I don't know whether that's
11 an accurate reflection of these conclusions or not.
12 Q The last sentence of this paragraph says,
13 "most nonsmokers who live with smokers are regularly
14 exposed to environmental tobacco smoke in their homes."
15 Do you agree with that statement?
16 A Well, this statement that you read, the
17 sentence begins with "Consequently." So I'm interpreting
18 this statement as a conclusion reached by this author from
19 the foregoing details.
20 Q Right. And I asked it the way I did
21 intentionally because I'm interested in your conclusion
22 based on whatever thought process you may use. I don't
23 want you to -- I'm not asking you to determine whether he
24 used an appropriate thought process to get to his
25 conclusion.
26 But based on whatever thought process you
27 have, do you agree with this statement that most

28 nonsmokers who live with smokers are regularly exposed to
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1 environmental tobacco smoke in their homes?
2 MR. CAFFERTY: Just to clarify, he's
3 answering the question in his capacity as an expert, or
4 you're asking him for an answer in his capacity as an
5 expert?
6 MR. HULBURT: I am.
7 THE WITNESS: I think that I would agree with
8 that statement, as you've read it. Again, the articles
9 that I've cited earlier suggest -- well, they show that
10 significant percentages of Californians have restrictions
11 and maybe even bans. But this question says "most," which
12 as a scientist, I would interpret to mean more than half.
13 And I think that would be consistent with all of the data
14 with which I am aware.
15 So in a scenario in which a nonsmoker is
16 living with a smoker and in a situation in which the
17 smoker smokes in the house in which the nonsmoker is
18 living, which is not necessarily a foregone conclusion, I
19 think -- and to the extent that they are there together on
20 a regular basis, then, yes, this statement, as you
21 proposed, would be something I could agree with.
22 BY MR. HULBURT:
23 Q All right. Let's go to page 21, paragraph
24 43, where he writes, "For nonsmoking adults who reported
25 being exposed, the average duration of all activities with
26 others smoking was 141 minutes per day. For exposed
27 children, the corresponding average was 202 minutes per
28 day."
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1 Maybe we need to split that in two
2 questions.
3 But my question of you is do you have an
4 opinion as to whether these times are accurate, or even
5 better, do you have an opinion as to the average duration
6 in a day when nonsmokers in California are exposed to the
7 smoker?
8 MR. KODSI: I'm going to object to that as
9 vague and as an incomplete hypothetical.
10 THE WITNESS: The first citation here is to
11 Robinson et al., 1996, which I presume is the CAP, C-A-P.
12 Although, that year is a little late. I do recall
13 reviewing CAP studies authored by a person named Robinson
14 that would predate that. And I recall that there were --
15 at least at this sitting, my recollection is that there
16 were some significant issues with the way that these
17 authors measured duration of exposure.
18 And, in fact, even in the footnote to this
19 citation, that Nazaroff says that that study inaccurately
20 refers to certain metrics.
21 So I think that there would be -- based on my
22 own remembrance of CAP study and Robinson as the author
23 and looking at these metrics and Nazaroff's notation that
24 there are some inaccuracies there, I think one would have
25 to look at these data pretty skeptically to see if they
26 are valid for this purpose or not.
27 BY MR. HULBURT:
28 Q The comment that Nazaroff makes in the
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1 footnote there is that the Robinson study only counted the
2 time that the nonsmoker is in the presence of the smoking
3 smoker and not the idea that the smoker might leave the

4 room and the smoke remain behind.
5 Right? Is that how you read, as a scientist,
6 the criticism that he's raising regarding the technique?
7 MR. KODSI: Objection; calls for
8 speculation.
9 MR. CAFFERTY: I'm also going to object as an
10 unfair question. The witness has testified repeatedly
11 that he hasn't read this document and now you're asking
12 him questions which require him to understand the context
13 in which these statements were made.
14 BY MR. HULBURT:
15 Q Yeah. I'm asking you a question, because
16 you're the obvious best person in the room to read
17 something like that and understand exactly what it means.
18 And so do you read this to be a comment that
19 they didn't factor the time that the nonsmoker would be
20 exposed to the ETS, even after the smoker leaves the
21 room?
22 MR. KODSI: Object to that as argumentative
23 and, again, calls for speculation.
24 THE WITNESS: As stated, that's what this
25 sentence suggests. My memory of the Robinson and CAP
26 studies is exactly the opposite, that what they counted
27 was the number of minutes per day that the nonsmoker was
28 in the presence of the smoker, without regard to whether
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1 the smoker was smoking or not, which is, in fact, the
2 opposite problem.
3 So without reviewing all of this, including
4 the citations, in much more detail, I stand by my previous
5 answer, which is I would approach this with some
6 skepticism. You'd have to dig into this with more detail
7 to see whether this is valid or not.
8 BY MR. HULBURT:
9 Q Do you have an opinion as to how much time or
10 what is the average duration that a nonsmoker is exposed
11 to a smoking smoker, and if it makes a difference, let's
12 separate adults from children.
13 MR. KODSI: Still an incomplete
14 hypothetical.
15 THE WITNESS: I think I would have knowledge
16 that would allow me to possibly make some estimates based
17 on my prior work and review of some literatures that I've
18 conducted. But I do not have a number, and I have not
19 formulated a number that I can give you at this point
20 that's responsive to that.
21 BY MR. HULBURT:
22 Q So as you sit here right now, you have no
23 opinion that you can give me on that question?
24 A I have not gone through the mental process of
25 trying to construct that number. No, I am not.
26 Q Is that true for both adults and children?
27 A That's true.
28 Q Are you familiar with the Wiley article
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1 that's cited there, related to children?
2 MR. KODSI: Counsel, it's almost 5:15, if we
3 can reach a wrapup point.
4 THE WITNESS: Well, that citation is also to
5 a final report for the California Air Resources Board, and
6 I have some remembrances of contact with the California
7 Air Resources Board. But that citation does not ring a
8 bell. However, having seeing it might make a difference.

9 That citation doesn't help me identify it in my mind, no.
10 MR. HULBURT: Okay. Okay. We have agreed
11 that I would try to stop at 5 o'clock. It's after 5
12 o'clock.
13 So we'll stop for today and recess until
14 tomorrow. Obviously, the deposition is not completed.
15 Do we have a standard stipulation for these
16 that we're doing with the transcripts in between?
17 I've had a whole bunch of standard
18 stipulations in retailer depositions, but not with the tobacco
19 defendants. So I don't know that I've been in a depo with
20 you guys.
21 MR. MILES: What to do with the depo?
22 MR. HULBURT: I'm not sure.
23 MR. KODSI: Some stipulation right now with
24 respect to the transcript.
25 MR. MILES: I don't know what the stipulation
26 is you're proposing. So we've never agreed to anything in
27 the past of how to handle a depo that ends one day and
28 reconvenes the next day as to what is going to happen with
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1 that transcript.
2 MR. HULBURT: That's what I was asking.
3 MR. MILES: I'm not aware of any agreement.
4 If there's something you wanted to propose, I'd consider
5 it. But, presumably, the transcript from today and
6 tomorrow will be presented to the witness at the same time
7 for review and signature.
8 MR. HULBURT: That's fine.
9 (Whereupon, at 5:13 p.m. the proceedings
10 were adjourned.)

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1 I hereby declare under penalty of perjury that
2 the foregoing is my deposition under oath; that these are
3 the questions asked of me and my answers thereto; that I
4 have read my deposition and have made the necessary
5 corrections, additions or changes to my answers that I
6 deem necessary.
7 In witness thereof, I hereby subscribe my name,
8 this _____ day of _____ 2000.

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Michael W. Ogden, Ph.D.

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1 STATE OF CALIFORNIA)
: SS.
2 COUNTY OF SAN DIEGO)
3

4 I, Margaret A. Smith, CSR No. 9733, hereby certify
5 that I reported in shorthand the above proceedings on
6 Wednesday, July 12, 2000, at 550 West C Street, Suite
7 1440, in the City of San Diego, County of San Diego, State
8 of California; and I do further certify that the above and
9 foregoing pages, numbered from 5 to 203, inclusive,
10 contain a true and correct transcript of all said
11 proceedings.

12 DATED: JULY 25, 2000.
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MARGARET A. SMITH
CSR NO. 9733

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